CALIFORNIA COASTAL COMMISSION
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Th14a

MEMORANDUM
October 15, 2008

TO: Commissioners and Interested Parties

FROM: Sherilyn Sarb/South Coast Deputy Director (Orange County)

SUBJ: **Addendum to Commission Meeting of Thursday, October 16, 2008, Item Th14a, Vested Rights Claim Application No. 5-07-412-VRC (Driftwood Properties LLC), Laguna Beach, Orange County**

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Th14a

October 15, 2008

SECOND ADDENDUM

To: Commissioners & Interested Persons

From: South Coast District Staff & Staff Counsel

RE: Item Th14a, Vested Rights Claim Application No. 5-07-412-VRC (Driftwood Properties LLC), Laguna Beach, Orange County

Response to Letter dated October 9, 2008 from Latham & Watkins Regarding Driftwood Properties' Claim of Vested Rights Application (attached)

A. Vested Right to Complete Grading Does Not Confer a Right to "Maintain" the Graded Area.

In its October 9, 2008 letter, Driftwood asserts that staff has erroneously separated its claim to maintenance of the graded pads at Driftwood Estates into a separate claim for a vested right. Driftwood states that "…if Driftwood demonstrates that it has a vested right in the graded pads, that right includes the right to maintain them." This assertion is incorrect. As explained in more detail below, one cannot obtain a vested right to "maintenance," a vested right simply allows a property owner to complete fully authorized development.– any development, even on property where there is vested development, must comply with existing law. Thus, the only way for Driftwood to "maintain" the graded pads, even if it has a vested right to the pads themselves, is if it also has a vested right to ongoing maintenance. As explained in the staff report, it has not substantiated this claim, so its claim to a vested right to maintenance of graded pads should be denied.

Driftwood states that one can obtain a vested right to a graded area, but none of the cases on which it relies supports this proposition. Instead, these cases each state that if a property owner has obtained all permits needed to grade property, they are entitled to complete grading that was permitted, but must obtain permits for any additional work on the property.

- "[T]he most that Aries would be entitled to perform under its grading permit would be the completion of the work authorized by those permits. … Work performed under the grading permits before February 1, 1973, does not entitle Aries to go forward with the construction of the project in its entirety." *Aries Development Company v. California Coastal Zone Conservation Commission*, 48 Cal.App.3d 534, 551 (1975).

- In *Spindler*, the trial court found that Spindler had obtained a vested right to complete fully authorized grading. The court of appeals did not question that determination, but it found that Spindler "had no vested or any other right to erect any particular building or type of building upon the subject property or to put it to any particular use, except as may now or hereafter be lawfully permitted." *Spindler Realty Corporation v. Monning*, 243 Cal.App.2d 255, 270 (1966).

- The court in *Environmental Coalition of Orange County* found that the defendant could complete grading work, but that the question of whether it could develop the remainder of its property without a coastal development permit was a question of fact that needed to be determined by the trial court. *Environmental Coalition of Orange County v. Avco Community Developers, Inc.*, 40 Cal.App.3d 513, 523 (1974).

Each of these cases concludes that while one may obtain a vested right to complete fully authorized development, one must comply with existing law for any other development on the property. The California Supreme Court upheld these conclusions in *Avco Community Developers, Inc. v. South Coast Regional Commission*, 17 Cal.3d 785, 793 (1976), where it held that a government must enforce the laws in effect whenever a new permit is issued. Thus, property owners must obtain a coastal development permit, or any other applicable permits, to undertake any development on their property, even if the development takes place on a structure to which they had established a vested right. Here are some examples of how this works:

- If property owners have established a vested right to a pre-coastal act staircase to the beach, the Commission requires the property owners to obtain a coastal development permit (CDP) prior to performing any non-exempt development on the staircase. The property owners do not have the right to "maintain" the staircase without first obtaining a CDP, unless such work consists of exempt repair and maintenance.

- Using one of Driftwood's examples, where property owners have obtained a vested right to complete construction of a home, staff does not assert that they could lose their vested right <u>to the home itself</u> if they failed to maintain it. The property owners must, however, comply with the Coastal Act when undertaking any non-exempt development related to the home. The owners have no vested right to maintenance, but most maintenance associated with upkeep of a single family home would be exempt under the Commission's regulations.

Driftwood does not cite a single case in which a court found that a property owner had the right to "maintain" an activity unrelated to a permitted structural development to which it obtained a vested right. Instead, the case law cited above holds that one must

comply with existing law when undertaking any new development, even when one has obtained a vested right to complete the fully authorized development.[1]

In sum, unless Driftwood has a separate vested right to maintenance of the graded pads, it cannot conduct maintenance activities on those pads without a CDP, unless the maintenance is exempt under the Commission's regulations. The question of whether such maintenance is exempt must be determined in the context of an enforcement hearing or an application for a CDP.

B. Driftwood's Predecessor Was Required to Obtain Governmental Approvals Before Grading the Driftwood Estates Property.

Although Driftwood claims that the staff report suggests it must produce evidence that Driftwood's predecessor obtained permits unrelated to the grading that took place at Driftwood Estates, this is not the case. The staff report simply identifies the permits that were most likely required before any grading took place on the property. In many cases, more than one type of permit is required before development takes place. For instance, today, one must obtain both a building permit and a coastal development permit, among others, before building a house in the coastal zone – both permits are required, although obviously only one is named a building permit.

Similarly, based on an analysis of the applicable Orange County codes, staff has concluded that Driftwood's predecessor needed to obtain a certificate of use and occupancy, a variance, an excavation permit and a building permit before starting any grading on the Driftwood Estates property. As discussed below, based on the plain language of the applicable Orange County codes, these permits and approvals were necessary before the type of grading undertaken at Driftwood could have lawfully taken place. Driftwood has not presented any evidence proving that these necessary approvals were obtained before its predecessor graded the property.

Excavation Permit

Driftwood appears to confuse the issue of the burden of proof by suggesting that it shifts to the Commission once Driftwood has provided evidence in support of its claim. With regard to each of the issues raised by their claim for a vested right, however, Driftwood bears the burden of proving its vested right. 14 CCR §13200. The Orange County Code makes specific reference to the need for an excavation permit, and states that "[no] permit for excavation for any building shall be issued before application has been made for a certificate of use and occupancy." Driftwood claims that despite this reference to an excavation permit requirement, because staff does not have the resources to identify

[1] The cases on which Driftwood relies, *Goat Hill Tavern v. City of Costa Mesa*, 95 Cal.App.4th 1519, 1530 (1992) and *O'Hagen v. Board of Zoning Adjustment*, 19 Cal.App.3d 151 (1971) analyze a vested right to continue operating a business once a use or conditional use permit has been issued. The court in *Goat Hill* specifically distinguished these cases from those involving a vested right in a land use context. *Goat Hill,* 95 Cal.App. 4th at 1526-27. Even if these cases were relevant here, they hold that one may maintain an ongoing business to which one has a vested right, but Driftwood's predecessor was not engaged in ongoing business activities at the Driftwood Estates site.

where in the Orange County code the excavation permit process is set forth, the Commission should not deny its claim for a vested right for lack of an excavation permit. This logic would impermissibly shift the burden of proof to the Commission. Commission staff has identified where there is a reference to a requirement for an excavation permit, thus Driftwood bears the burden of proving why its predecessor in interest did not need to obtain such a permit.

Driftwood additionally argues that the grading undertaken on the property is not excavation. It contradicts its own position, however, in the written materials it has submitted to the Commission. Driftwood states, "the original grading *excavated* about 127,000 cubic yards of dirt . . . ." (June 2, 2008, letter from R.Zbur to K.Schwing, with attachments, emphasis added.) The engineering consultants hired by Driftwood based their estimate of expenditures by the Esslingers on the costs per cubic yard for *the excavation* and export of dirt. The applicant's claim that no excavation was performed must be rejected when its own materials use this term to describe the work that was performed. Furthermore, it is valuable to note that the County's current Excavation and Grading Code defines 'excavation' as 'the mechanical removal of earth material' and 'grading' as 'any excavating or filling or combination thereof' (see Section 7-1-184 of the Orange County Grading and Excavation Code). Clearly, the work undertaken on the property in late 1950's and early 1960's would qualify as 'excavation'.

Certificate of Use and Occupancy

Driftwood claims that its predecessor was not "using" the Driftwood Estates property when it graded 127,000 cubic yards and removed 121,000 cubic yards of soil from Driftwood Estates. Driftwood would have the Commission believe that its predecessor in interest spent over $1.2 million in today's dollars to grade property with no intention of "using" the property. Even under Driftwood's overly narrow reading of the term "use," a certificate of use and occupancy was required if one proposed to "use" the land.[2]

More importantly, Driftwood urges the Commission to adopt a definition of the term "use" that is far more narrow than warranted. The code in effect in 1959 and 1960 does not define the term "use," but the section establishing the purpose of the ordinance makes it clear that the ordinance is intended to apply to a broad range of activities. Section 3(F) states:

> "Except as hereinafter provided: No building or structure shall be erected, and no existing building or structure shall be moved, altered added to or enlarged, nor shall any land, building, structure or premises be used, designed or intended to be used for any purpose or in any manner other than a use listed in this ordinance or amendments thereto as permitted in the district in which such land, building, structure or premises is located." (emphasis added). Orange County

[2] Section 23 of the code requires that any applicant for a certificate of use and occupancy show that their use or proposed use of the land complies with existing law and ordinance 351.

> Ordinance #351 Section 3(F)(1) (1935), as amended by Ordinance #561 (1949).

Section 23 of this same ordinance requires a certificate of use and occupancy before vacant land can be occupied or used, therefore the term "used" should be interpreted more broadly than Driftwood suggests in order to fulfill the purpose of the ordinance, which is to regulate uses, designs and intended uses of property. Unless Driftwood can sustain its burden of proving that its predecessor graded this property without intending for it to be used for some purpose other than agriculture (for which it would not have needed a certificate of use and occupancy), then its predecessor needed to apply for such a certificate of use and occupancy.

Variance

In addition, Driftwood's predecessor would have needed to show that its proposed use of the property complied with the applicable zoning codes. It does not appear that the grading complied with the single family residence zone, as the building sites were significantly smaller than required, thus the property owner would have needed to obtain a variance. The applicable definition of "building site" was "the ground area of a building or buildings together with all open spaces as required by this ordinance." Ordinance #351, Section 2(2). There were fourteen graded pads, ranging in area from 900 to 2600 square feet, on two parcels of land, both zoned for single family residences. As stated in the staff report, this construction was inconsistent with the applicable Orange County Code section 10(c), which stated, "the minimum building site area for each one-family dwelling shall be six thousand (6000) square feet." None of the fourteen pads was consistent with this requirement.

As noted above, Section 3(1) of the Orange County Code states "no building or structure shall be erected . . . nor shall any land, building, structure or premises be used, *designed or intended to be used* for any purpose or in any manner other than a use listed in this ordinance . . . as permitted in the district in which such land, building, structure or premises is located." Driftwood has not shown how the pattern of grading is consistent with the single family designation of the parcels nor how the small "building sites" would have complied. Pursuant to Section 19, a variance permit would have been required to construct building sites that were inconsistent with the provisions of the zoning code. The applicant has provided no evidence that such an application was submitted or approved.

Building Permit

The applicable code for building permits required:

> Before commencing any work pertaining to the erection, construction, reconstruction, moving, conversion, alteration or addition to any building or structure within any district shown upon any sectional district map of Orange County duly adopted and made a part of this

> ordinance, a building permit for each separate building and/or structure, except accessory or incidental buildings and/or structures not used for dwelling purposes required in the operation of any existing ranch or farm, shall be secured from the Building Inspector of said county by the owner or his agent for said work and it shall be unlawful to commence said work until and unless said permit shall have been obtained. Ordinance #351, Section 22 (1935), as amended by Ordinance #561 (1949).

The applicable code required a building permit before commencing any work "pertaining to" erection, moving or construction of any building or structure. Driftwood apparently maintains that the pads were not graded for the erection, moving or construction of any building or structure. It begs the question of just why any entity would have spent what Driftwood estimates would cost $1,221,400 to grade pads that did not pertain to the erection, moving or construction of a building or structure.

What other use would there be for the graded pads? If grading in and of itself was the use, then that is a use and change in character of the land, requiring an application for a certificate of use and occupancy to be submitted. The only exception to the requirement of submission of an application for a certificate of use and occupancy is for agricultural uses. As the applicant has not suggested that the agricultural exception applies, an application for a certificate of use and occupancy should have been submitted.

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October 9, 2008

VIA FEDERAL EXPRESS

Honorable California Coastal Commissioners
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

043668-0003

Agenda Item No. Th14a

Re: Driftwood Properties' Claim of Vested Rights Application (No. 5-07-412-VRC); Agenda Item No. Th14a at the October 16, 2008 Public Hearing

Dear Honorable Commissioners:

We are writing on behalf of our client, Driftwood Properties, LLC ("Driftwood"), regarding Driftwood's application to confirm its vested right in 5.8 acres of non-ESHA area of the historically graded area ("Vested Rights Application") on property referred to as Driftwood Estates, located at the northern terminus of Driftwood Drive, in Laguna Beach, Orange County (the "Property"). Driftwood purchased the Property, which is part of a larger 325-acre property, in 2004. Exhibit 1 shows the larger 325-acre property and the smaller Property, of which the historically graded area is a part. Exhibit 2 shows in greater detail the Property and Driftwood's claim of vested right to 5.8-acres of non-ESHA in the historically graded area on the Property.

No one contests that the historically graded area was graded before February 1960,[1] years before the Coastal Act became effective in 1977 (and its predecessor, the Coastal Zone Conservation Act, became effective in 1972) and before the County of Orange had any grading permit requirement. Nonetheless, the conclusion-driven Staff Report wrongly recommends that the Commission deny Driftwood's Vested Rights Application. The Staff Report, unable to rebut Driftwood's clear evidence that no grading permit was required when the grading occurred on the Property, points to multiple land use and non-land use laws, irrelevant to any grading

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[1] Driftwood has submitted historical photos to the Commission (*see* Exhibit 3) that demonstrate that the grading on the Property occurred on or before May 18, 1962 to support its Vested Rights Application. Commission staff attached to the Staff Report an additional historical photo from the University of California Santa Barbara archive which demonstrates the grading occurred on the Property on or before February 9, 1960, which again is before the Coastal Act was enacted. (September 25, 2008 (5-07-412-VRC) for October 16, 2008 hearing ("Staff Report"), Exhibit 13.) Driftwood also has located another photo of the grading dated October 10, 1960. (See Exhibit 5.)

requirement or requirements not applicable to grading, in its argument that *some* type of permit must have been needed to undertake the grading. This novel approach to determine whether a right to development is vested finds no basis in the law, and appears to rely on arguments, without evidence supporting it, supplied by Penny Elia, an adjacent neighbor who regularly opposes any and all activities on Driftwood's Property, including regular fuel modification ordered by the City of Laguna Beach to protect nearby homes.

As discussed below, Driftwood has substantiated fully its vested right to keep and maintain the 5.8 acres of non-ESHA, historically graded area of the Property.[2] First, the grading was lawful as there were no grading permits required when the grading occurred before early 1960, and no other permits were necessary. Second, the grading was completed in its entirety at that time, thereby conferring a vested right. As both prongs for establishing a vested right in the graded area are met, Driftwood respectfully requests that the Commission approve its Vested Rights Application.

I. DRIFTWOOD'S LONG-TERM PLANS FOR THE PROPERTY AND EFFORTS TO RESOLVE COMMISSION STAFF'S CONCERNS

Before discussing the evidence establishing Driftwood's Vested Rights Application, this section provides some critical background regarding the larger context under which Driftwood's Vested Rights Application was filed. Ultimately, this Vested Rights Application and the enforcement actions regarding the Property brought by Commission earlier this year are both about a larger redevelopment proposal (the "Project") which will be before the Commission in approximately a year to eighteen months. This Vested Rights Application reflects Driftwood's efforts to have larger policy issues impacting the Project heard in a non-enforcement context where Commissioners can participate in briefings to fully understand the issues related to the Project and Driftwood can have a full and fair hearing to address issues related to its development proposal.

Driftwood purchased the 325 acres (which includes the Property) in 2004 to pursue the Project as a comprehensive redevelopment plan for the entire 325 acres. The Project would dedicate approximately 251 of the 325 acres as open space, and would include the future construction of single-family homes on the 5.8 acres of non-ESHA, historically graded area on the Property. Since acquiring the Property, Driftwood has worked with the City of Laguna Beach, the Commission, and Commission staff to address various hazardous conditions that have existed on the Property prior to its purchase by Driftwood.

Driftwood purchased the Property in October 2004 from the Esslinger Family Trust (the prior owner). Shortly thereafter, the City of Laguna Beach Water Quality Department directed Driftwood to replace sandbags that had been placed on the Property in the 1990s by the prior

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2 Please note that as discussed further below in Section III, the presence of ESHA on the Property is not relevant to the question of whether Driftwood possesses a vested right in that portion of the Property. Nonetheless, Driftwood amended its Vested Rights Application for the 8.1-acre Property to only include the 5.8 acres of non-ESHA area.

owner. The City directed Driftwood to replace those sandbags because they had deteriorated and were in poor condition due to sun exposure and the passage of time, and therefore no longer provided the flood protection that the City required. Under the City's direction, Driftwood replaced 5,500 sandbags in 2004, and in 2005 emergency flooding concerns again prompted the City to direct Driftwood to replace an additional 500 sandbags. At that point, Commission staff advised Driftwood that staff believed a coastal development permit was needed for placement of the 500 sandbags, and that an after-the-fact coastal development permit was needed for the prior owner's original placement of the erosion control measures and Driftwood's initial sandbag replacement efforts as directed by the City. Although Driftwood did not agree that a coastal development permit was necessary,[3] in an effort to cooperate with Commission staff, Driftwood applied for the coastal development permits.

Driftwood became concerned about the fairness of the process when it learned that the Commission permitting staff had allowed an opponent of Driftwood's Project to apparently play a role in the Commission staff's internal deliberation process.[4] Upon review of documents in Commission files and others produced after a Public Records Act request, Driftwood learned that while its applications for coastal development permits were being processed, Commission staff was in frequent communication with Penny Elia, a neighbor of the Property and opponent of the Driftwood development proposal. (*See* Exhibit 4.) During this time, Ms. Elia and Commission staff appear to have communicated about how to frame the issues in the staff report related to the coastal development permits, including information staff did not share with Driftwood. (*See id.*) After these communications, Commission staff unexpectedly indicated to Driftwood that the staff would recommend denial of the coastal development permits just days before the Commission hearing, and suggested Driftwood withdraw its application. Driftwood did so.

Days after Driftwood withdrew its application for coastal development permits, Commission staff sent two notices of violation to Driftwood concerning the activities on the Property which, as described above, largely occurred before Driftwood purchased the Property in 2004. Specifically, in May 2007, Commission staff alleged Coastal Act violations due to two 1995 lot line adjustments by the prior owner relating to the Property, brush clearing and the placement of sandbags and erosion control devices on the Property by the prior owner, and the replacement of some sandbags by Driftwood, in each case because the staff claimed that the activities were undertaken without coastal development permits. In support of the alleged violations and in the face of empirical evidence to the contrary, Commission staff alleged that the historically graded area constituted ESHA under the Coastal Act under the theory that, even though the historically graded area did not support ESHA today, that area ***might*** some day in the future do so, and therefore should now be classified as ESHA.

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[3] Driftwood hereby incorporates by reference its May 9, 2008 Statement of Defense.

[4] *See* Driftwood's letters sent to Commission staff on June 15, 2007 and May 9, 2008, and Driftwood's October 9, 2008 Letter Regarding Procedural Concerns Raised by the Hearing of Driftwood Properties' Claim of Vested Rights Application and Response to Addendum to Staff Report on October 2, 2008.

While Driftwood disagrees with Commission staff's positions regarding the alleged Coastal Act violations and the use of the "prospective ESHA" theory to evaluate the extent of ESHA on the historically graded area, Driftwood has continued to work with Commission staff in an attempt to reach a mutually agreeable resolution. In June 2007, Driftwood submitted a detailed response to the Commission disagreeing that Driftwood or the prior owner acted in violation of the Coastal Act. The June response letter also clearly stated Driftwood's desire to work with the staff to resolve the enforcement matters amicably. Shortly thereafter, Driftwood proposed to partially resolve the enforcement matter with a proposal to replace all sandbags on the Property with a vegetative solution. Driftwood further proposed that the issue of whether the graded pads constitute ESHA be resolved when the Commission considers Driftwood's Project, which is in the entitlement process with the City of Laguna Beach and should be before the Commission within a year to eighteen months. To date, Driftwood has indicated its desire to resolve the enforcement matters amicably, but no resolution has been reached.

II. A VESTED RIGHT EXISTS IN 5.8 ACRES OF NON-ESHA AREA ON THE HISTORICALLY GRADED AREA

A. Legal Standard for Vested Rights

Under the Coastal Act, "[n]o person who has obtained a vested right in development prior to the effective date of [the Act]...shall be required to secure approval for the development pursuant to [the Act]". (Pub. Resources Code, § 30608.) The theory of vested rights is founded upon the Constitutional prohibitions against taking property without due process of law in both the Constitutions of both California and the United States. Provided the property owner establishes a vested right to lawful development, the vested right endures so long as no "substantial change" is made to the development that is the subject of the vested right. (Pub. Res. Code § 30608.) Absent such a change, a vested right effects an "otherwise blanket continuation of the exemption from coastal development permit requirement[s]..." (*Pardee Construction Co.*, 95 Cal.App.3d at 481.) Thus, when a vested right is established, as is the case here, if a state agency abridges that right, the property owner is constitutionally entitled to just compensation.

The Staff Report correctly cites the proper standard for confirming a vested right: (1) "claimed development must have received all applicable governmental approvals...prior to January 1, 1977; and (2) "claimant must have performed substantial work and incurred substantial liabilities . . . ." (Staff Report at p. 7.) However, the Staff Report then wrongly suggests that in order to be able to secure a vested right, **some** form of governmental approval must have been received and relied upon in undertaking the development. This is wrong and not supported by law or by the Staff Report's own statement of the law. Only "all applicable governmental approvals" need to be secured. Where there are no "***applicable*** approvals" (such as when, for example, no grading permits are required), then there are no governmental approvals to secure. Here, the prior owner relied on its right to grade under the applicable Orange County code. This regulatory scheme gave the prior owner a *de facto* authorization or permit.

In fact, the Coastal Act itself makes it clear that a vested right can exist for development without a permit when that development occurs before the permit requirement exists. The Coastal Act acknowledges that a vested right exists for development that would have required a coastal development permit after 1977, but occurred before the coastal development permit requirement existed. (*See* Coastal Act, § 30608.) As such, Section 30608 protects a property owner's Constitutional right to lawful development that vested before the coastal development permit existed – to do otherwise would have been a taking of those property rights in violation of the Constitution. Thus, the existence of Section 30608 implicitly acknowledges that to establish a vested right to lawful development, an applicant need not show a permit for that development if no permit requirement existed at the time. The same analysis applies here. As there was no grading permit requirement in Orange County when the grading occurred on the historically graded area in on or before February 1960 and, as discussed below, no other governmental permits were required to conduct that grading, Driftwood has demonstrated that the grading occurred lawfully. No permits were required pursuant to the Orange County Code, and therefore the Code itself gave the prior owner the authorization to grade, and the Property's prior owner was entitled to rely on that authority.

The Staff Report also wrongly states that only the person who undertook the subject development is entitled to make a vested right claim. (Staff Report at 7.) This is also wrong. Courts have long recognized that a vested right is more than an expectation. It is a property right that runs with the land and may not be revoked without constitutional rights of due process or just compensation. (*See, e.g., Pardee Construction Company v. California Coastal Commission* (1979) 95 Cal.App.3d 471, 481 ["Neither statutory nor constitutional authority exists authorizing the State Commission to limit or deny a once recognized vested right basis for exemption."]; *Aries Development Co. v. Coastal Zone Conservation Commission* (1975) 48 Cal.App.3d 524, 548 ["Once a right has vested, its impairment or destruction must comport with constitutional principles."].) As with all property rights, once a property right has vested, it is a legal right that exists in the subject property and is freely transferable unless expressly prohibited by law. (*See, e.g., Malibu Mountains Recreation, Inc. v. County of Los Angeles* (1998) 67 Cal.App.4th 359, 367-368 [once vested, a conditional use permit creates a property right which may not be revoked without constitutional rights of due process and "runs with the land, not to the individual permittee"]; *see also Hansen Brothers Enterprises v. Board of Supervisors* (1996) 12 Cal.4th 533, 540 [a right to continue a lawful nonconforming use established for a property by a prior owner runs with the land].)

Lastly, contrary to assertions in the Staff Report, there is no question that one can establish a vested right in graded land or, as the Staff Report puts it, a "topographical feature, such as a graded pad." (Staff Report at 16.) California courts have consistently approved vested rights in graded land where that grading was ***lawfully*** conducted, such as in this case. (*See Aries Development Co. v. Coastal Zone Conservation Commission* (1975) 48 Cal.App.3d 524, 544-45 [finding vested right in legal grading, but no vested right in illegal tentative tract map or site plan approval]; *Environmental Coalition of Orange County, Inc. v. Avco Community Developers, Inc.* (1974) 40 Cal.App.3d 513, 523 [finding vested right in legal grading]; *Spindler Realty Corp. v. Monning* (1966) 243 Cal.App.2d 255, 264 [finding vested right in legal grading, but no vested right in further development].)

Driftwood has a vested right in the 5.8-acres of historically graded area on or before early 1960, which area is identified in Exhibit 2 because: (1) the historically graded area was lawfully graded before the predecessor to the Coastal Act was passed in 1972; (2) the prior owner of the Property completed the grading of the historically graded area (performing substantial work and incurring substantial liability) on or before 1960; and (3) when grading the that area, the prior owner acted in a good faith reliance on its lawful right to do so.

B. The Property Was Graded In Or Before February 1960 and Prior To The Coastal Act's Enactment

Aerial photographs conclusively establish that the Property was graded on or before February 9, 1960. (*See* Exhibits 3 and 5.) Commission staff has presented no evidence to the contrary and does not dispute this fact. (Staff Report at p. 10.) The Coastal Zone Conservation Act, the Coastal Act's predecessor, was enacted in 1972 (followed by the enactment of the Coastal Act in 1976). Therefore, the historically graded area on the Property was developed before the formation of the Coastal Commission

C. The Prior Owner Performed Substantial Work and Incurred Substantial Liability In Grading the Property

It would cost over one million dollars today to undertake the extensive grading that occurred on historically graded area on or before February 1960. An independent analysis conducted by the engineering consulting firm of Wilson Mikami Corporation, based on an approximation of the Property's topography prior to grading, concludes that it would cost $1,221,400 in today's dollars to achieve the graded conditions that exist on the Property today, which is the equivalent of approximately $220,176.16 in 1962.[5] Therefore, because the prior owner performed substantial work and incurred substantial liability in grading the historically graded area in which Driftwood claims a vested right in preserving and maintaining, Driftwood's Vested Rights Application should be approved.

D. Driftwood Has Met Its Burden To Establish Lawful Grading on the Property, and The Staff Report's Assertions to the Contrary Are Unfounded

Driftwood conclusively has established that the prior owner's pre-Coastal Act grading of the 5.8 acres on the Property was lawful, and neither Commission staff nor anyone else has presented evidence to the contrary. When the prior owner graded those 5.8 acres, no governmental authority with jurisdiction over the Property required grading permits for that grading. As no permit was required, and the prior owner's grading was completed before any such requirement came into existence, the prior owner's grading was lawful.

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[5] This figure is based on the Gross Domestic Product ("GDP") Deflator Index, an inflation measurement index that measures the cost of a project in a given year as compared to the present cost of materials or labor. The GDP Deflator Index is calculated by dividing Nominal GDP by Real GDP. (*See* http://www.measuringworth.com/aboutus.html [last visited July 16, 2008].)

1. The Prior Owner Complied With All Applicable Legal Standards When Grading The Property

Orange County did not require grading permits when the prior owner undertook the grading on the Property. On and before February 1960, the County, which had adopted the Uniform Building Code by ordinance, had not adopted any grading permit requirements. In contrast, in August 1962, after the grading on the Property occurred, the County adopted an Excavation and Grading Code that provided that "[n]o person shall commence or perform any grading...without first having obtained a permit to do so from the Superintendent." (Codified Ordinances of the County of Orange, Div. 1, tit. 7 § 71.047.) Because the prior owner completed the grading of the 5.8 acres on the Property prior to August 1962, that grading had been completed by the time the County adopted its first grading permit ordinance, and was completed in compliance with the Orange County Code as it then existed.

We are aware of no other state or federal law that would have required the prior owner to obtain a grading or other permit or authorization before grading the 5.8 acres on the Property. Notably, the California Environmental Quality Act was enacted in 1970, the California Porter Cologne Act in 1970, the federal Endangered Species Act in 1973, California's Endangered Species Conservation Act in 1969 (which was replaced by the California Endangered Species Act in 1973), and the federal Clean Water Act 1977.[6] In each case, these environmental statutes were enacted at least 10 years after the grading was completed. Commission staff similarly has failed to point us to any federal or state regulations that otherwise would have applied to the prior owner's grading. Accordingly, as Driftwood has met its burden of establishing that the grading was completed lawfully and Commission staff has presented no evidence to the contrary, the Commission should approve Driftwood's Vested Rights Application for a vested right to maintain the 5.8-acre non-ESHA, historically graded area in its graded condition.

2. Driftwood Produced Sufficient Evidence To Establish Its Vested Right

Driftwood presented Commission staff with substantial and voluminous evidence in support of its Vested Rights Application and in subsequent Driftwood submissions (responding to Commission staff requests) dated March 7, 2008, April 1, 2008, and June 2, 2008 (which are incorporated herein by reference). The evidence in the record supports a finding that Driftwood has a vested right in the 5.8-acre non-ESHA, historically graded area. Among other things, this evidence includes:

- The Orange County Building Code in force on or before December 9, 1960 (when the prior owner graded the 5.8 acres in which Driftwood maintains it has a vested right) which contains no grading permit requirement;

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6 While we do not concede that these statutes would have required any authorization, the fact that they were enacted after the grading occurred is conclusive evidence that they imposed no requirements on the prior owner in connection with the grading.

- Not only was the Property outside of the City of Laguna Beach in the 1960's, but the City of Laguna Beach grading code was not even enacted until 1976 and, therefore, did not apply to the prior owner's historic grading of the 5.8 acres;

- Historic copies of grading permits for other Laguna Beach properties, which help establish that had the prior owner's grading been completed when permits were required, one would have been issued and one would have appeared in the files;

- An independent third party valuation of the grading work conducted by the prior owner on the Property in the early 1960s; and

- Photographic evidence of the Property as it existed in 1959; on February 9, 1960; and on May 18, 1962, establishing that the Property was graded on or before February 9, 1960 (before the Coastal Act was enacted and before a grading permit requirement existed).

As discussed above and in its numerous submissions, Driftwood has met and exceeded its burden to demonstrate a vested right in the historically graded area. Once Driftwood met its burden by proving beyond any doubt that the grading was legal because there were no applicable governmental approvals necessary to conduct the grading, the burden shifted to Commission staff to identify any facts or evidence that contradicted the evidence that Driftwood has vested its rights in the 5.8-acres of historically graded area.

3. Nothing In The Staff Report Rebuts The Evidence Driftwood Produced

In an attempt to refute Driftwood's demonstration that the grading was lawful and required no permits, the Staff Report incorrectly advances a number of theories and arguments that are inapplicable or an incorrect reading of the law, and do not overcome the evidence that Driftwood presented establishing that the grading was lawfully carried out and a vested right to it exists.

a. The Staff Report Mischaracterizes The Definition Of Lawful Development

The Staff Report has fundamentally mischaracterized the nature of what constitutes "lawful development" for purposes of establishing a vested right. Under California law, a vested right in development arises after the property owner has performed substantial work and incurred substantial liability in good faith reliance upon a lawful right to develop. (*Avco Community Developers v. South Coast Regional Commission* (1976) 17 Cal. 3d 785, 793.) As discussed above, the principal factual question in determining whether lawful development occurred depends on whether the grading occurred with all *necessary* land use approvals that were required to complete that development at the time the right vests. (*See, e.g., Halaco Engineering Company v. South Central Coast Regional Commission, et al.* (1986) 42 Cal.3d 52, 66 ("[The Coastal Act provides] a procedure whereby a developer may obtain a determination of a claim to a vested right to proceed with a development for which he has all *required* permits....") (emphasis added).) The approvals are entirely dependent upon the nature of the development

that occurred and the land use laws that were required to commence development at that time. (*See id.*, *see also Avco Community Developers* at 793.)

Specifically, the Staff Report points, without basis, to inapplicable provisions of the County Code related to certificates of occupancy, variances, excavation, building, and even restrictions on the receipt and possession of explosives in an attempt to rebut Driftwood's evidence establishing lawful development. (*See* Staff Report at 11-12.) As discussed in the section below, none of these provisions were applicable to the grading that is the subject of the Vested Rights Application. Driftwood is not seeking a vested right in what may ultimately be built on the Property, it simply seeks a vested right in the grading of the historically graded pads.

Contrary to the Staff Report's assertions, no legal authority supports interpreting "necessary approvals" to encompass *any possible permits or approvals* that may apply to what ultimately may be further developed on the property. (*See* Staff Report at 11-12.) If accepted, the Staff Report's argument would require a property owner seeking a vested right to engage in potentially bottomless speculation of every imaginable entitlement or approval related to potential future development on the property (whether or not that development is sought, planned, feasible or implemented). This cannot be the law.

Similarly, the Staff Report asserts that "necessary approvals" includes *any possible law* that may apply to the property owner or its agents, the property or actions on the property. Again, holding an applicant to this standard is untenable and lacks basis in the law. Pursuant to the Staff Report's position, the Commission would be required to deny a claim of vested right anytime there was speculation that unlawful activity might have occurred in connection with the property in question. For example, work conducted by a contractor without a valid license or a company employing undocumented workers could be grounds for denial of a vested rights claim. That is not and cannot be the law. The vested rights doctrine does not require such guesswork.

b. No Certificate Of Occupancy Was Required Because Grading Is Not A "Use" Of Land

The Staff Report is correct that the Orange County Code includes a certificate of occupancy provision, but that provision does not apply here. The provision provides that "[n]o vacant land . . . shall hereafter be occupied or used, except for agricultural uses other than livestock farming or dairying, and no building hereafter erected, structurally altered or moved . . . shall be occupied or used until a certificate of use and occupancy shall have been issued therefore by the aforesaid Building Inspector." (County Ordinance No. 351, Section 25, Staff Report, Ex. 6 at 11.) The provision goes on to say that that a "[w]ritten application for a certificate of use and occupancy for use of vacant land or for a change in the character of the use of land . . . shall be made before any such land shall be so occupied or used." (*Id.*)

This provision does not apply here because the Property has not been "occupied" or "used" and grading does not result in or constitute a "change in the character of the use of land." The Property was unused and vacant before the grading, and it remained so after the grading. The grading also did not change the "character of" the use of the Property. (County Ordinance

No. 351, Section 25, Staff Report, Ex. 6 at 9.) The Property was zoned residential before the grading, and the zoning remained residential afterward.

The County Code itself makes this clear where it restricts the types of "uses" of land permitted in different districts, including uses that do not include the construction of buildings. As expected, the "uses" listed in the Code involve humans using or occupying the land *for a purpose* such as "farming," "one-family dwellings," "golf, swimming, tennis, [and] polo," "residential hotels," "flower and vegetable gardening ," "public playgrounds and athletic fields," and even "cement manufacture" and "rock crushing." (*See id.*, Sections 10, 11, 17, 18.) Grading land vacant does not constitute a *use of land.* Prior to the grading, the Property consisted of vacant land. Upon completion of the grading, and as can be seen today, the Property remained vacant land without any "use." No uses were ever undertaken at the Property, and, therefore, there was no change of use when the Property was graded and no certificate of occupancy was required. Driftwood has not been able to find any evidence that the County (which is responsible for enforcing the County Code) has made any attempt in the 48 years since the historical grading occurred to assert that the existence of the historically graded area in and of itself somehow violates the County Code.

Additionally, the Staff Report points to the number and size of pads on the Property, claiming they were inconsistent with 1960's Orange County zoning code and thus to acquire a certificate of occupancy for the Property, the owner would have had to obtained a variance to develop the Property in a manner inconsistent with the zoning code as it then existed. (Staff Report at 13.) The fact that the Property was graded into pads (even pads that Commission staff claim did not comply with lot size requirements) is no reason to assume that each pad was intended by the prior owner to become a separate lot. Further, even if that was the prior owner's intent (and there is no evidence that it was), depending on the requirements, a variance to develop on a non-standard size lot only would have been necessary upon subdivision or construction. A variance would ***not*** have been necessary to undertake the grading of the Property, which had nothing to do with the size of developed lots allowed by the County Code.

c. No Building Permit Was Required To Grade The Property

The Staff Report's assertions that a building permit for the historical grading is equally unfounded. First, the Staff Report misleadingly cites the Section of the Ordinance on which it relies for this proposition. (*See* Staff Report at 14.) The full relevant portion of Section 22 reads:

> Before commencing any work pertaining to the erection, construction, reconstruction, moving, conversion, alteration or addition to any building or structure...a permit for each separate building and/or structure...shall be secured from the Building Inspector...

(Staff Report, Ex. 6 at 11.) This section is not susceptible to any other reading than that it applies to the construction of buildings or structures. It does not apply to grading or anything else that may precede the actual construction. Not only is this interpretation logical, it still

applies today. Neither the City of Laguna Beach or Orange County require a building permit to grade property.[7]

d. No Excavation Permit Was Required To Grade The Property

No excavation permit was required for the historical grading for two simple reasons. First, the Staff Report cannot even point to the existence of an excavation permit requirement in the Code that it claims must exist. (Staff Report at 14 ["While Commission staff has been unable to find the specific section of this code that contained the excavation permit requirements..."].) It is inappropriate and would constitute and abuse of discretion to conclude that an action was not lawful when the allegedly breached code section cannot even be identified. Second, and more importantly, the cited section of the Ordinance, Section 23, is not even relevant. The section reads, "[n]o permit for excavation of any building..." (Staff Report, Ex 7a p. 11.) The historically graded area in which Driftwood maintains a vested right was not "excavated" but was graded to be flat – which was completely legal at the time the grading occurred 48 years ago. While not defined by the subject ordinance, the general understanding of the term "excavate," and the definition given by the Oxford English Dictionary, is "The action or process of digging out a hollow or hollows in (the earth, etc.); an instance of the same; the result or extent of the process." Grading, on the other hand, is defined as, "[t]he action or process of reducing (a road, etc.) to practicable gradients; concr. a graded portion of a road." As used in the cited Ordinance, especially in context (i.e., "excavation of any building"), the permit requirement requires digging a hollowed area, not reducing the gradient of hillsides. Again, the staff's contortions bear no fruit and this argument fails to overcome Driftwood's absolute and positive showing that no government approvals were required for the lawful grading that occurred in or before February 9, 1960.

e. No Evidence Exists That Explosives Were Used To Grade The Property, And Even If It Did, The Staff Report Does Not Point To Any Applicable Permit Requirement For Explosives

Lastly, the Staff Report misleadingly points to alleged "evidence" presented by members of the community that the property was graded by explosive materials. (Staff Report at 14.) There is no evidence that explosive materials were used on the Property. The only support for such an assertion is a hearsay email from Penny Elia, a neighbor of the Property. (Exhibit 22 to the Staff Report.) This email does not constitute evidence, and as no other evidence exists in the record supporting such an assertion, the Staff Report appropriately concludes there is no evidentiary basis to make any conclusions regarding whether explosives were used on the Property. (*See* Staff Report at 14.) However, even if explosives were used to grade on the Property, the Staff Report does not point to any historic requirement mandating permits for the use of explosives, and Driftwood has not found one. Thus, the Staff Report appears to have abandoned its claim that Driftwood's failure to "prove" that a valid permit to possess explosives

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[7] Personal Communication by Beth Collins-Burgard with Patti Rhyne, Orange County Planning Department (October, 8, 2008); Personal Communication by Holly Williams with Scott Drapkin in the City of Laguna Beach Planning Department (October, 8, 2008).

is grounds for denying Driftwood's Vested Rights Application. (*See* Staff Report dated July 17, 2008 for Commission's August 2008 Public Hearing, at p. 14 ["[Driftwood's] claim is not credible, as, at a minimum, the owner of the site needed...a permit to receive or possess explosives for the grading."].)

Here, Driftwood met its burden to present evidence establishing that the grading of the historically graded area was lawful, and no evidence has been presented that rebuts this evidence. Thus, Driftwood has carried its burden of proof and the evidence establishes that the prior owner lawfully completed the historical grading on the Property before 1962 (the year in which the County first adopted a grading permit requirement), and that therefore no grading permit was then required. There is no evidence to suggest that any other permit or approval was required. Under California law, Driftwood has established that it has a vested right in the historical grading.

f. The Condition of the 1960 Pre-Coastal Act Grading In 1977 (When The Coastal Act Was Enacted) Is Irrelevant To The Vested Rights Analysis

The Staff Report also wrongly asserts that, in addition to establishing separate vested rights to keep the grading and maintain the graded land, Driftwood also must present "clear evidence" that "on January 1, 1977, the effective date of the Coastal Act, these pads were clear of vegetation or in the process of being cleared of vegetation." (Staff Report at 18.)

Again, the Staff Report's conclusion is based on a misunderstanding of the law. Nothing in the doctrine of vested rights, as defined in the common law or the Coastal Act itself, requires a showing of maintenance of a vested right as a condition of *acquiring* a vested right. In *Avco Community Developers, Inc.*, the court said: "Evaluation of [a claim under Section 30608] requires a determination of the point in the development process at which a landowner can be said to have *acquired* a vested right . . . ." (17 Cal. 3d at 791 [emphasis added].) Thus, establishing a vested right in the historically graded area requires evidence relating to the condition of the Property at the time the grading occurred, not at the time the Coastal Act became effective.

The Staff Report wrongly suggests that Driftwood is seeking two vested rights: (1) to keep the grading, which is development under the Coastal Act and, therefore, can be "vested;" and (2) to "maintain" the historically graded area. (Staff Report at 17.) Under principles of constitutional law, a vested property right includes the right to protect the conditions that exist at the time of the vesting. (*O'Hagen v. Board of Zoning Adjustment* (1971) 19 CA 3d 151; *see also Goat Hill Tavern v. City of Costa Mesa* (1992) 6 Cal.App.4th 1519, 1530 ["Where a permit has been properly obtained and in reliance thereon the permittee has incurred material expense, he acquires a vested property right to the protection of which he is entitled."]; *Pardee Construction Co. v. Cal. Coastal Comm'n* (1979) 95 Cal.App.3d 471, 481 ["The nature and extent of the vested rights is a matter controlled by constitutional principles."].) Nothing in the Coastal Act or its implementing regulations requires property owners to reapply, once a vested right has been established, in order to engage in maintenance of a vested right. The Commission Staff therefore incorrectly interprets Driftwood's application as two separate vested rights – one in the grading,

and a separate right to maintain the graded pads. Contrary to the Staff Report, if Driftwood demonstrates that it has a vested right in the graded pads, that right **includes** the right to maintain them.

There is also no legal authority to support the Staff Report's suggestion that failing to maintain the historically graded area prior or after the enactment of the Coastal Act could cause Driftwood's vested right, once established, to be extinguished, or that Driftwood is required to maintain the area for which its has vested rights. In fact, the Court of Appeal has concluded that adding such an exception to the Coastal Act would "fly in the face of accepted rules of statutory construction." (*See Pardee Construction Co.*, 95 Cal.App.3d at 478.)

As such, failure to maintain a vested right cannot extinguish the vested right or right to maintain the vested development. For example, once a property owner vests a right in the construction of a home, not engaging in maintenance of that home (no matter if it the lack of maintenance occurred before or after the enactment of the Coastal Act) does not eviscerate that vested right in the home or the right to maintain it after its vesting. As another example, if a property owner establishes a vested right in a putting green that was constructed prior to enactment of the Coastal Act, that vested right is not lost if the owner is not required to maintain the property during the year the Coastal Act was enacted.

Once a property owner has established a vested right, that right is a property right, the loss of which is governed by constitutional law. (*Bauer v. City of San Diego* (1999) 75 Cal.App.4th 1281, 1294 ["If the permittee has incurred substantial expense and acted in reliance on the permit, the permittee has acquired a vested property right in the permit and is entitled to the protections of due process before the permit may be revoked."] [internal citations omitted]; *see also Pardee Construction Co.*, 95 Cal.App.3d at 471 [vested right to an exemption from the permit requirements of the California Coastal Zone Conservation act of 1972 was not lost by delay in working on part of the project with resultant lapse of the building permits].) Moreover, Section 30608 clearly, explicitly attaches only one condition to continuance of that vested right – that "no substantial change may be made in such development without prior approval having been obtained under [the Coastal Act]." (Pub. Resources Code § 30608.) When analyzing the same exception to the vesting provision of the predecessor to the Coastal Act, the Court of Appeal concluded that "[w]here the Legislature has specifically made an exception to the general provisions of a statute, courts are without power to imply a broader or more general exception." (*Pardee Construction Co.*, 95 Cal.App.3d at 477-78.)

Here, Driftwood has conclusively established that the prior owner's pre-Coastal Act grading was lawful, and no substantial change has taken place since the vesting occurred. The condition of the pads in 1977 is irrelevant to the question of whether Driftwood established a vested right when it graded the pads over 48 years ago in 1960.

g. Driftwood's Vested Right in the Historically Graded Land Includes The Right To Maintain It Under Coastal Act Section 30610(c)

Even if the Staff Report was correct in its assertion that Driftwood must separately establish a vested right in the maintenance of the historically graded area (which it is not for the reasons set forth above), Driftwood could maintain its vested grading under the coastal development permit exception for repair and maintenance.[8] The Staff Report asserts that the Coastal Commission Regulations act to bar the activities as repair and maintenance. (*See* Staff Report at 19.) However, the section of the regulations cited by the Staff Report, Section 13252(a)(3), is inapplicable to the present situation for two reasons. First, the historically graded area is not a sandy area within 50 feet of a coastal bluff or an ESHA, as it must be to fit the description in that section.[9] Moreover, even if the historically graded area could be characterized as such (which it cannot), the regulation only restricts the methods of maintenance, not Driftwood's right to maintain the grading.[10] For example, while repair and maintenance using mechanical equipment may be prohibited if Section 13252(a)(3) were applicable, Driftwood still would be permitted to maintain the historically graded pads with non-mechanized hand equipment and certain other methods.

III. THE COMMISSION NEED NOT MAKE A FINDING REGARDING ESHA IN THESE PROCEEDINGS, AS THE ISSUE IS IRRELEVANT TO DRIFTWOOD'S CLAIM OF VESTED RIGHT

The Commission need not make any findings regarding ESHA in these proceedings, as the presence of ESHA on the Property is irrelevant to Driftwood's Claim of Vested Rights.

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8 "Repair or maintenance activities that do not result in an addition to, or enlargement or expansion of, the object of such repair and maintenance activities" are exempt from permit requirements. (Pub. Resources Code, § 30610(c); *see also Union Oil Co. v. South Coast Regional Comm'n* (1979) 92 Cal. App. 3d 327, 331.) Maintenance of the historically graded area, including the brush clearing that is necessary for fire protection purposes, is consistent with the Coastal Act's exemption for repair and maintenance activities, and therefore does not require a coastal development permit.

9 The text in Section 13252(a)(3), which describes the areas excluded from the repair and maintenance exception, appears to be subject to more than one interpretation. However, as discussed above, even if the text can be interpreted to include the Property, contrary to the claims in the Staff Report, Driftwood need not acquire a coastal development permit for maintenance of the Property if such maintenance does not include the use of mechanical equipment or the placing any rocks, sand, gravel, or other solid material.

10 The Staff Report is incorrect when it states that Driftwood "would be required to obtain a [coastal development permit]" before it could maintain the historically graded area (Staff Report at 20) because the exception to the repair and maintenance exemption set forth in Section 13252(a)(3) applies only to repair and maintenance that includes "[t]he placement or removal, whether temporary or permanent, of rip-rap, rocks, sand or other beach materials or other forms of solid material" or "[t]he presence, whether temporary or permanent, of mechanized equipment." (*See* Section 13252(a)(3).) Repair and maintenance that can be accomplished without placing any rocks, sand, gravel, or other solid material and without the use of mechanical equipment does not require a coastal development permit. Accordingly, the statutory exception to the repair and maintenance exemption does not limit or otherwise affect Driftwood's right to repair and maintain the historically graded area– which is vested development – without a coastal development permit.

Commission enforcement staff appears to agree. (*See* October 2, 2008 Addendum to the Staff Report at 2 ["whether the property consists of ESHA today is irrelevant to Driftwood's claim for a vested right and need not be considered by the Commission when determining whether such a right exists"].). This makes sense because a vested right is a constitutionally protected property right to have and maintain development, even after a substantive change in the law. Thus, the enactment of the Coastal Act, which first described and protected ESHA, cannot change Driftwood's right to have and maintain its vested property right to the historically graded area on the Property. Additionally, as discussed above in Section 2(f), Section 30608 does not include an ESHA exception limiting the continuance of that vested right. (*See* Cal. Pub. Resources Code § 30608; *Pardee Construction Co.*, 95 Cal.App.3d at 477-78.)

Nevertheless, Driftwood's Claim of Vested Right excludes any areas of the Property Driftwood's biologist found to contain ESHA, so approval of the vested rights claim and maintenance of the historically graded area would have no sensitive resource impacts.[11] The Commission, however, need not resolve this novel policy issue at this time, because, as discussed above, such a determination is irrelevant to the proceedings.

IV. THE COMMISSION SHOULD APPROVE DRIFTWOOD'S APPLICATION OR RECOMMEND THAT STAFF PURSUE A HOLISTIC RESOLUTION TO THE VESTED RIGHTS CLAIM AND ALLEGED COASTAL ACT VIOLATIONS

We understand that Commission counsel has advised some Commissioners that due to the pending enforcement matters regarding the Property, the Commissioners should limit the subject matter of, or refrain from engaging in, briefings by Driftwood related to Driftwood's Vested Rights Application. We believe that limiting the Commissioners' and an applicant's ability to discuss the substantive issues of a claim of vested rights with Commissioners has fairness and due process ramifications and impairs an applicant's constitutional right to petition government. In light of this situation, and because resolution of the Vested Rights Application is not required unless the pending enforcement matters cannot be resolved cooperatively,[12]

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[11] The Addendum to the Staff Report, however, states that Commission biologist, Dr. Dixon disagrees and classifies the entire site as ESHA based on a "prospective ESHA" theory. (Addendum to Staff Report at p. 1-2.) As detailed in Driftwood's Statement of Defense (incorporated by reference in its entirety herein), Driftwood finds no legal basis for such a theory. As described therein, designation of ESHA under the Coastal Act is limited to areas in which "plant or animal life" or "their habitats" *are currently* "either rare or especially valuable" – the Coastal Act does not permit designation of ESHA in areas where plant or animal life *may in the future* become ESHA. (*See* May 9, 2008 Statement of Defense at p. 13-15.) The October 2, 2008 Addendum to the Staff Report also alludes to the conclusions of Glenn Lukos Associates and PCR Services Corporation which, as noted in Driftwood's Statement of Defense, dispute Dr. Dixon's factual conclusion that the property is likely to become ESHA. According to these experts, given the historic grading, together with the significant presence of highly invasive non-native species, the most likely future condition of the historically graded area is the establishment of non-native species, not ESHA. (*Id.* at 16.) This conclusion is further buttressed by the fact that (as Dr. Dixon himself acknowledges) the historically graded area has not constituted ESHA for the past 48 years since it was graded, and does not constitute ESHA today. (*See id.* at 16-17.)

[12] Driftwood has agreed that it will not engage in further sandbag placement or vegetation removal on the Property until these matters are resolved by the Commission or a court.

Driftwood requests that the Commission either confirm Driftwood's vested rights at this time, or that the Commission allow Driftwood to *withdraw* its Claim of Vested Rights Application (reserving its right to resubmit it at a later time) *or postpone* the hearing on the Vested Rights Application (as well as the related enforcement issues) until such time as Driftwood's larger redevelopment proposal (for the entire 325 acre property) comes before the Commission in approximately eighteen months to a one year.

Driftwood appreciates your attention to this matter and, should the need arise, please call me with any questions at (213) 891-8722.

Very truly yours,

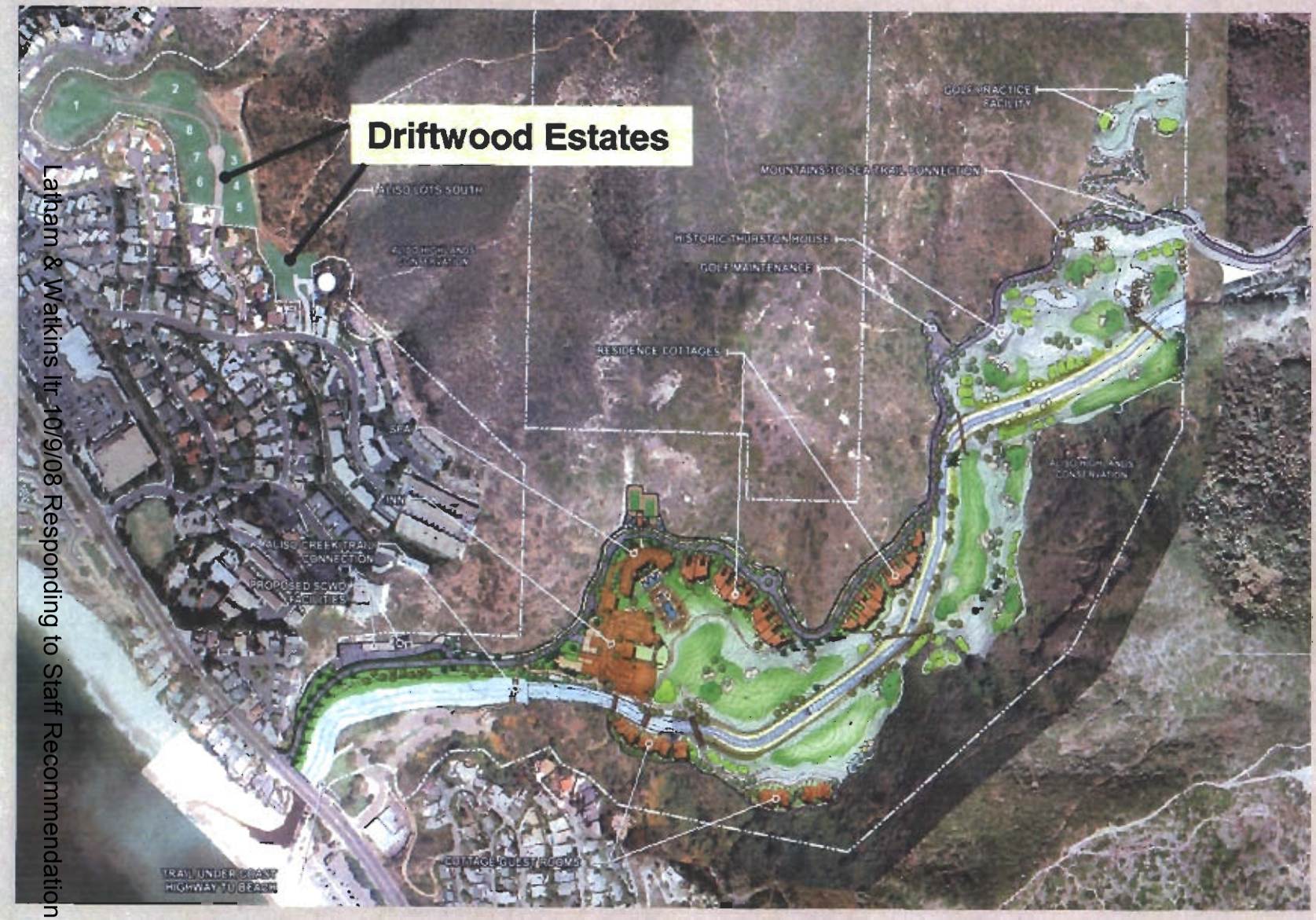
Rick Zbur /BAC

Rick Zbur
of LATHAM & WATKINS LLP

Attachments

cc: Karl Schwing, CCC
Lisa Haage, Chief of Enforcement, CCC
John Mansour, The Athens Group
Greg Vail, The Athens Group

LA\1880531



2008

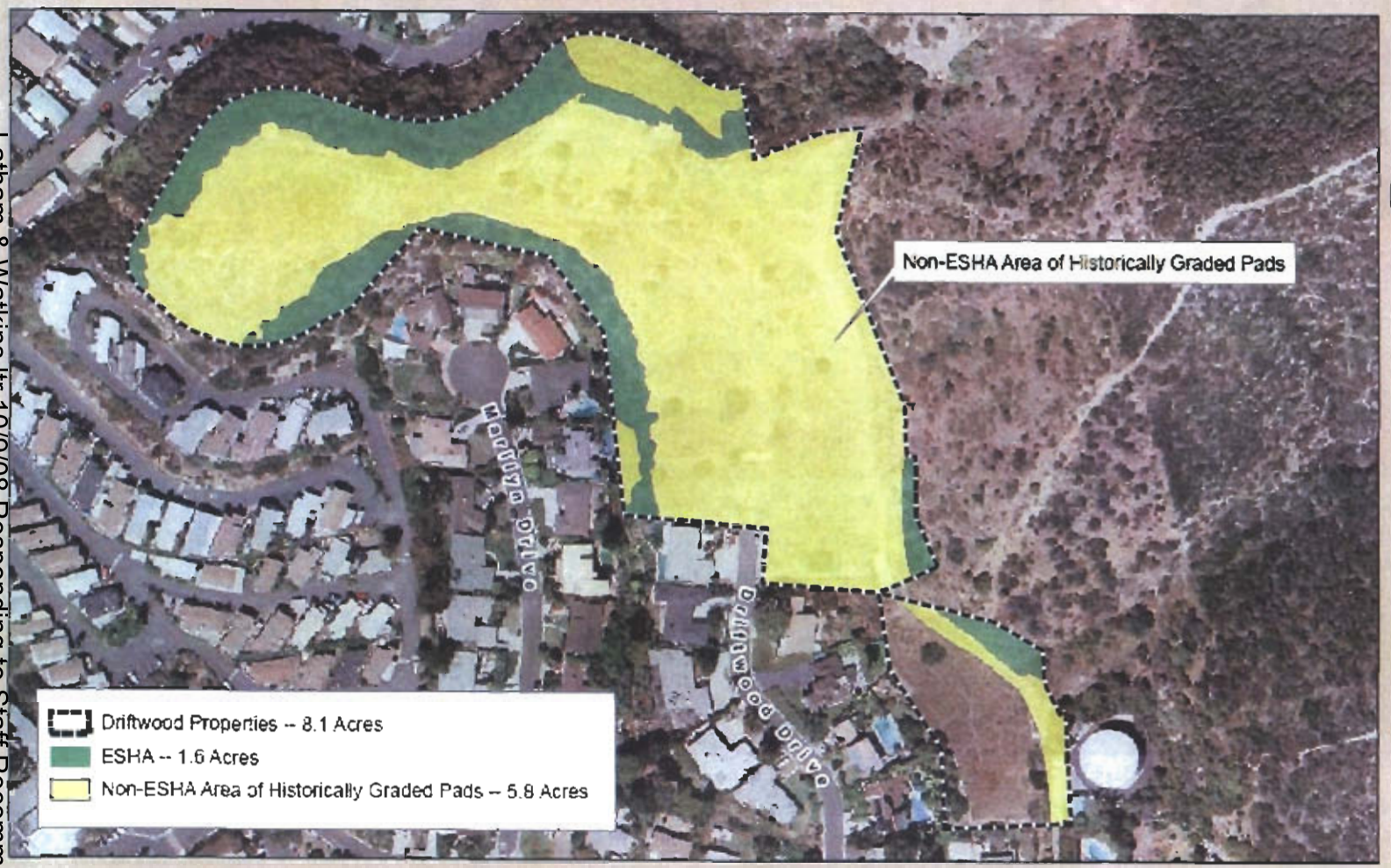
Proposed Redevelopment Project for 325-acre Property

- 251 acres open space
- Mountains-to-Sea Aliso Creek Trail connection
- Aliso Creek restoration

Exhibit 1

The Athens Group

Latham & Watkins ltr 10/9/08 Responding to Staff Recommendation

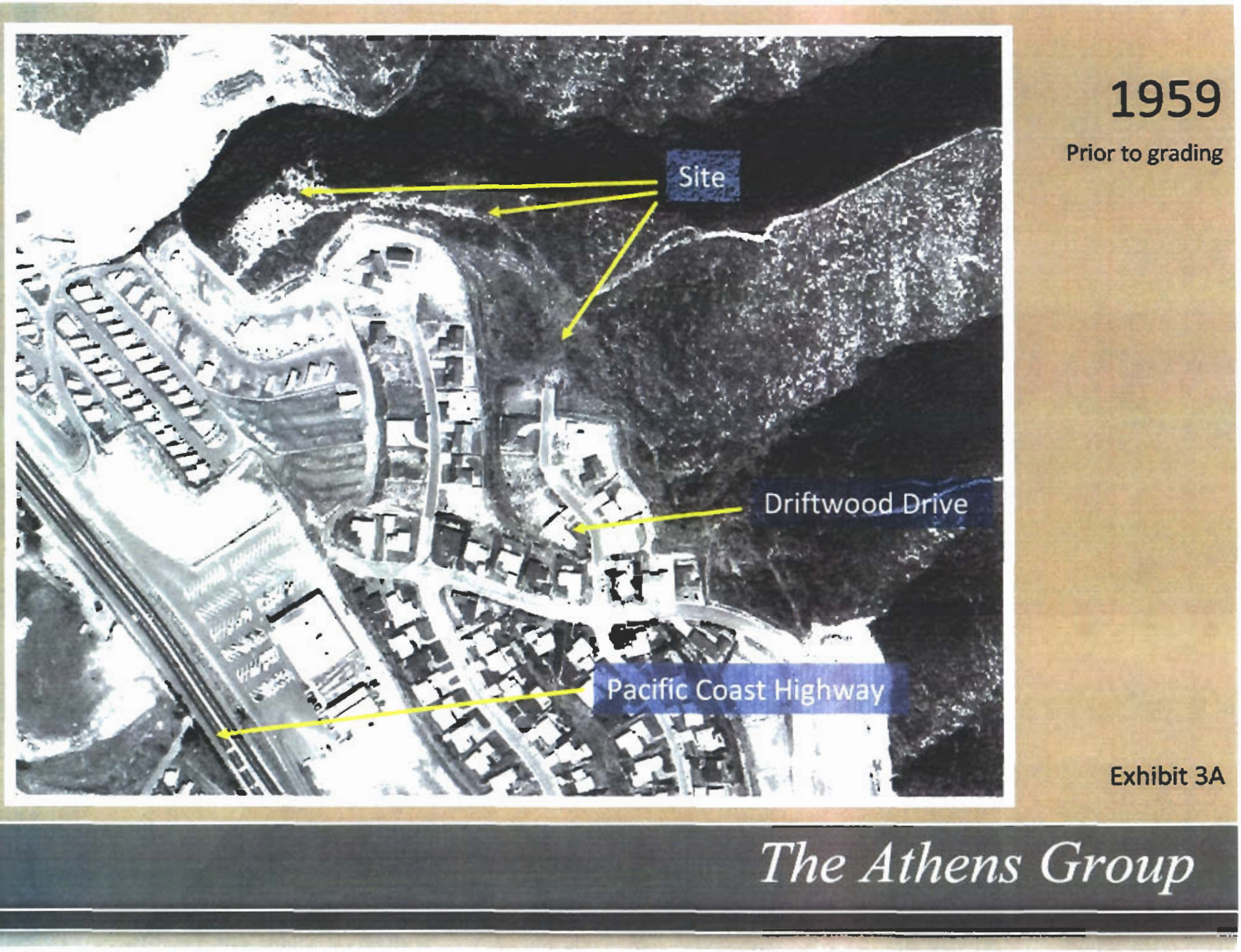


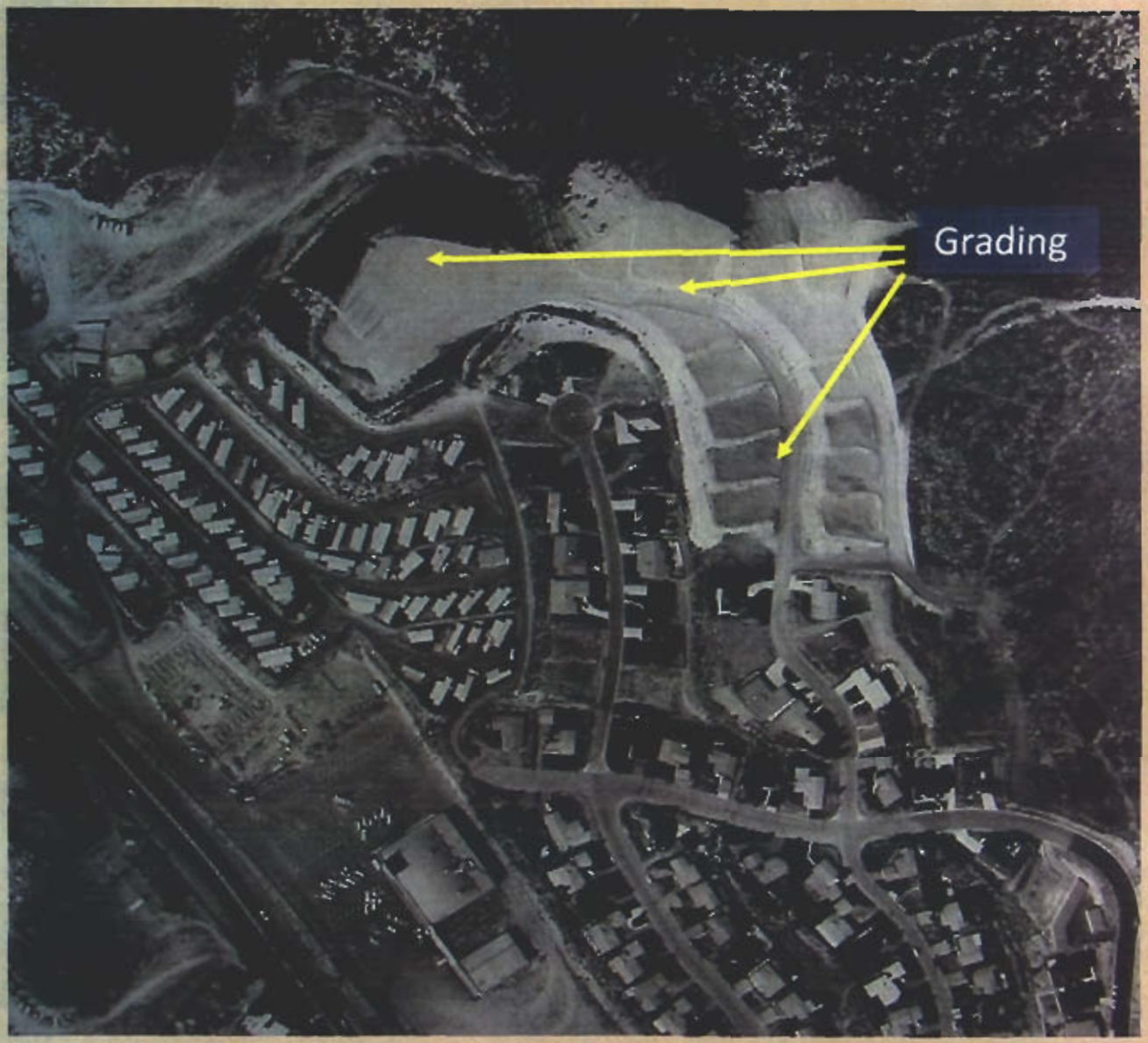
2008

Claim of Vested Right to 5.8 Acre Non-ESHA Area of Graded Pads

Exhibit 2

The Athens Group

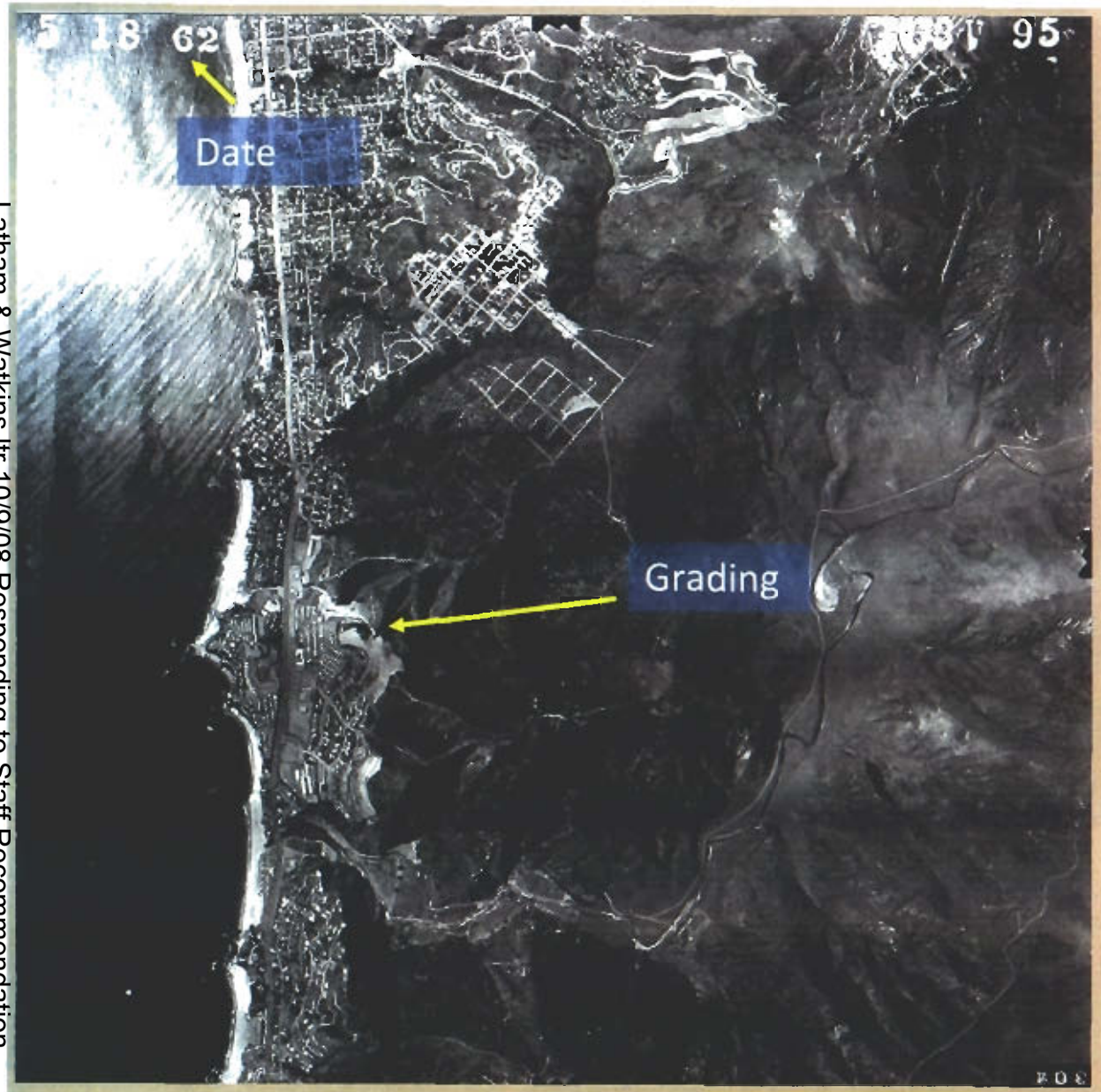

1959
Prior to grading
Site
Driftwood Drive
Pacific Coast Highway
Exhibit 3A
The Athens Group



Pre-May 18, 1962
Site Graded

Exhibit 3B

The Athens Group



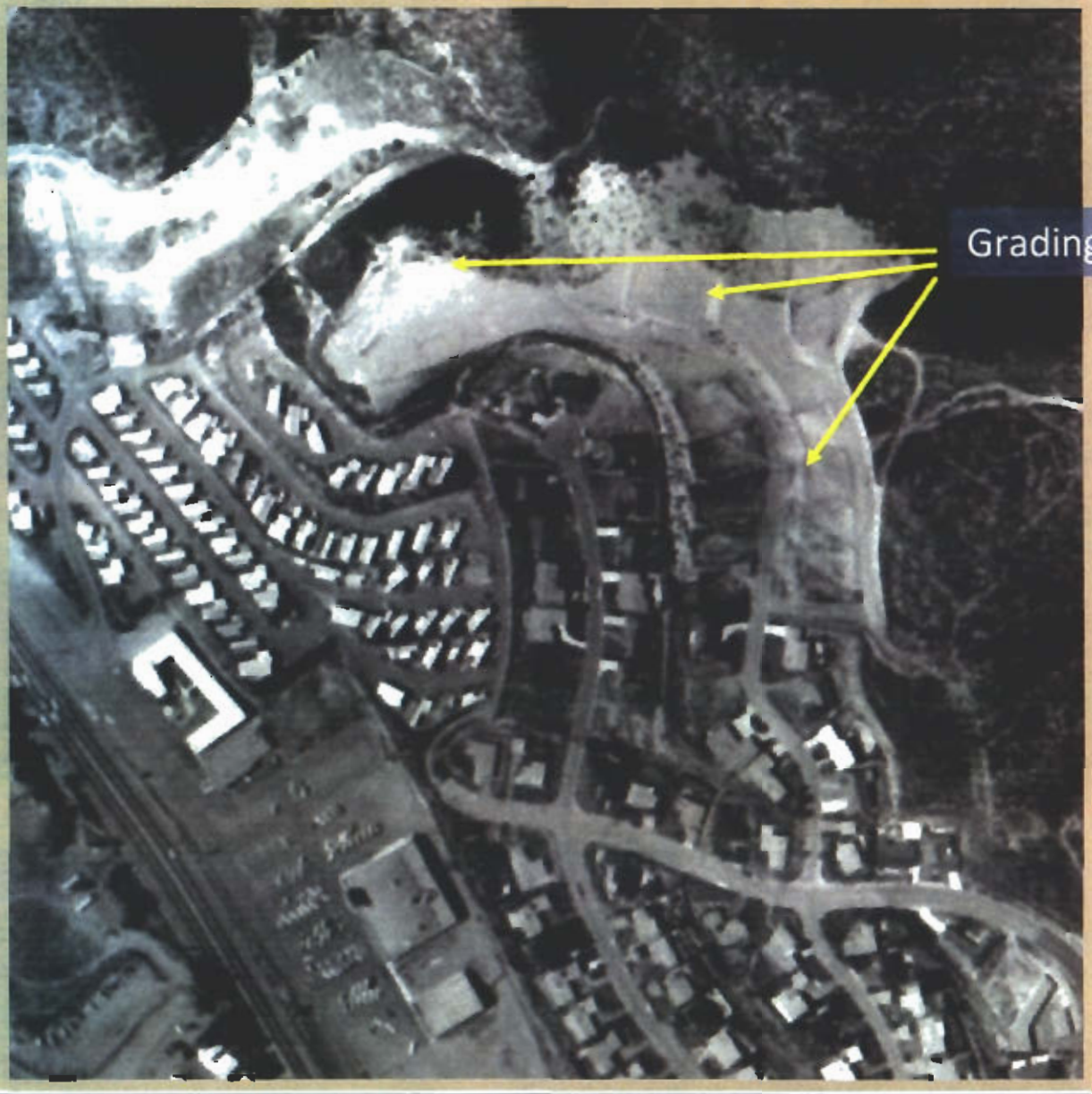
May 18, 1962

Site Graded

Archival photo from University of California, Santa Barbara Collection

Exhibit 3C

The Athens Group



May 18, 1962

Zoom In Showing Site Graded

Archival photo from University of California, Santa Barbara Collection

Exhibit 3D

The Athens Group

Ryan Todaro

From: Penny Elia [greenp1@cox.net]
Sent: Thursday, March 08, 2007 1:57 PM
To: Ryan Todaro
Cc: Mark Massara; Karl Schwing; Andrew Willis; Meg Vaughn; karen_goebel@fws.gov; Erinn Wilson; Pat Veesart; Marcia Hanscom; DMayer@dfg.ca.gov; Ken_Corey@fws.gov; Christine Chestnut; bhenderson@dfg.ca.gov; Sherilyn Sarb; John Dixon
Subject: Application 5-06-382 - LSA 2000 Bio Resources Assessment


Bio Report Cover Letter.doc (1 ..


ATT424125.txt (74 B)

Greetings, Ryan -

In reviewing the many, many files that you were so kind to provide me with the other day, I was able to cross-reference a lot of different documents, submittals and emails. I wanted to bring a few things to your attention, and please do forgive me if you have already connected the dots on all of this for the May hearing on 5-06-382:

You requested the LSA 2000 Biological Resources Assessment from Glenn Lukos Associates in January of this year. I found your request in the 5-06-382 file for the After-the-Fact permit for The Athens Group unpermitted development at Hobo Aliso Ridge. What I want to make sure you know is that during the EIR process, Michael Brandman Associates (EIR consultant) decided they would hire LSA to come in and do an "interim" biological resources assessment during an inappropriate time of year "after" the EIR was already in circulation and comments were being submitted by your agency along with many others, including those copied on this email (at the time, Brad Henderson was our contact with DFG).

What LSA did was to assign new values to biological resources on site and depart from the City's adopted habitat value ranking system and criteria stipulated in the General Plan, thus violating the General Plan policy. The correct application of General Plan criteria yields a habitat value assessment that differs significantly from that produced by Michael Brandman Associates (MBA). In particular, areas of habitat which should have been designated Very High Value habitat per the General Plan were assigned by MBA via LSA to categories of lesser value, a reassignment which has no basis in the General Plan. The General Plan explicitly includes Very High Value habitats within the definition of Environmentally Sensitive Areas (ESA) under the purview of the California Coastal Act. Both the General Plan and the Coastal Act prohibit new development in ESAs - including sandbagging which is considered "development."

The Sierra Club, in conjunction with the Hobo Aliso Neighborhood Association, hired David Bramlet to conduct a biological assessment of this same area following the release of the LSA/MBA assessment and we received sign off from Karlin Marsh as well as acknowledgment from her that LSA/MBA had altered the City's habitat ranking system which was based on her 1992 Biological Resources Inventory and is part of the City's General Plan.

On July 28, 2003, Sierra Club sent an External Memo along with the David Bramlet biological assessment to John Dixon, Karl Schwing and Meg Vaughn to refute the LSA bio resources assessment. I found this memo attached to the spiral bound document on the subject matter in the "Driftwood Estates Laguna Beach" file. I am attaching that memo for your reference. We were never able to have the meeting that is

requested in the memo, but I do hope that we might be able to review this document and its content as it relates to application 5-06-382. I also trust you will cross reference these two files (Driftwood Estates and 5-06-382) as you prepare the staff report for the May hearing. Should you, John, Meg or Karl need additional copies of this spiral bound document please do let me know. I will have copies made and overnighted to you immediately.

As always, thank you for considering this input. I believe the cross-referencing of several of the files you provided for my review would be very helpful to your efforts since there is so much information contained in various files that are linked only by their location (Hobo Aliso Ridge, South Laguna).

Best -

Penny Elia
Sierra Club
949-499-4499

Ryan Todaro

From: Penny Elia [greenp1@cox.net]
Sent: Thursday, April 05, 2007 9:02 AM
To: Christine Chestnut
Cc: Mark Massara; Karl Schwing; Andrew Willis; Marco Gonzalez; Lisa Haage; Pat Veesart; Marcia Hanscom; Ryan Todaro; John Dixon
Subject: Athens Newest Plans for Hobo Aliso Ridge and Restoration Area - Land Swap with YMCA


AthensPlan4-4-07.JATT147861.txt (70 PG (1 MB) B)

Good morning, Christine -

I sincerely appreciate knowing the Restoration/Monitoring Order for Hobo Aliso Ridge is on its way to The Athens Group in light of the fact that I attended a meeting last night for the unveiling of their newest project plan. They reported that they would be filing their application in the next two weeks to the City of Laguna Beach. The City has hired a planner to work on this project and Athens is paying for that new employee with a "large down payment that is being used for payment on an hourly rate." This is certainly an interesting concept.. the applicant pays the planner to process their application. How novel.

What is rather curious to many of us is that they continue to propose a "recreational area" in the restoration/monitoring site that they have promised to the YMCA. As we discussed before this is a land swap of approximately 2.8 acres behind their existing golf course which is currently owned by the YMCA for land directly in the significant watercourse/restoration/monitoring area. They have now changed the name from Driftwood Estates to Aliso Lots - FYI.

Can you please help me understand how this is possible? If the current order is for a minimum of 5 years, how can they be promising this to the YMCA for a recreational zone that would be part of an application that's being filed in two weeks? A regional YMCA facility??

Since they didn't provide any handout materials, I don't have anything to provide you in writing, but am attaching one rather poor photo that calls out the YMCA parcel. As you'll note it's right in the restoration area. When John Mansour was asked by the audience where the YMCA representative was for comment, he said that there wasn't a need for the YMCA to be involved in the public meetings, that the deal was agreed upon and more "program details" would unfold as the application proceeded through City Hall. The land swap deal has been agreed upon? Does the YMCA understand what they are swapping for? Are they aware of the Restoration Order?

John Mansour and Martyn Hoffmann spoke to a lot of rezoning of this entire area.

Could you or someone on staff that's been working on all of this please let me know your thoughts. Has the YMCA been contacted by CCC?

Many thanks -

Penny
949-499-4499

Ryan Todaro

From: Penny Elia [greenp1@cox.net]
Sent: Friday, April 06, 2007 2:07 PM
To: Christine Chestnut
Cc: Mark Massara; Karl Schwing; Andrew Willis; Marco Gonzalez; Lisa Haage; Pat Veesart; Marcia Hanscom; Ryan Todaro; John Dixon
Subject: Athens Newest Plans for Hobo Aliso Ridge and Restoration Area - Land Swap with YMCA


Proposed Specific Plan Land Us...


ATT398497.txt (2 KB)


AthensPlan4-4-07.JATT398498.txt (70 PG (1 MB)


B)

Please find attached a cleaner version of the map labeled with RECREATION in the Restoration/Monitoring Area. Has anyone on staff let the YMCA know about this? Athens tells us this is a done deal and it was published again in the newspapers today. I can't imagine the Y taking on this type of fiscal responsibility when they have a piece of land that could be accessed "if" Athens wasn't planning on putting a golf course on it.

Also, based on this mapping, it appears the footprint of the Aliso Creek Inn & Golf Course grows every time we have "Town Hall" meeting...

Thanks for any light you can shed.

Penny

Ryan Todaro

From: Karl Schwing
Sent: Monday, April 16, 2007 11:34 AM
To: Alex Helperin; Louise Warren; Teresa Henry; Sherilyn Sarb; Jonna Engel; Ryan Todaro; Carrie Bluth
Cc: Ryan Todaro; Pat Veesart; Andrew Willis; Lisa Haage
Subject: Athens Group drainage devices/sandbags at Hobo Aliso Ridge/Driftwood - Balancing Argument Outline

Based on JD's memo, the area where sandbags and drainage devices are and will be located at the Athens Group site at Hobo Aliso Ridge is degraded ESHA. During our last conversation, there was a preliminary conclusion that given the present condition of the site, the drainage pipes and sandbags are necessary erosion control devices in the short term. However, our ultimate goal is to implement a long term solution that would likely include some recontouring of the site for drainage purposes and revegetation/habitat restoration. We also discussed that, if the site was found to be ESHA, we could only authorize the ATF and future work with conditions to require submittal of a plan to implement a long term solution with a balancing argument because the placement of these structures in the ESHA is inconsistent with 30240. While we could deny the project and pursue some level of resolution through enforcement, there seemed to be some group consensus that we can get at a long term solution through permitting, but we couldn't do so through enforcement. Please advise if anyone has a different understanding or perspective on this approach.

I also want to be sure that everyone is comfortable with using the balancing provision in this case and the manner that we use it. Here's a simple outline of a possible balancing argument on the Hobo Aliso/Driftwood sandbags staff report. Could everyone take a look and respond to the questions/comments within and provide feedback?

The subject site is ESHA - 30240(a) says "Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas..."

The installation of drainage structures and sandbags requires a large initial construction disturbance event followed by ongoing events for maintenance, and placement of pipes, pipe anchors, placement of filter fabric, sandbags with sand/gravel [anything else?]. These activities remove vegetation and occupy land that might otherwise be colonized by native plants. There is also recurring noise and disturbance related to replacement of sandbags. These activities = significant disruption of habitat values. The use, drainage control devices, isn't dependent on being within the ESHA (i.e. you don't need ESHA to be present in order to install these drainage devices)....or is that the right way to look at it? Perhaps you could say that these drainage devices do need to be installed in the ESHA in order to prevent erosion that has ongoing impacts to the ESHA thus they are 'dependent on the resource'. In any event, the work is inconsistent with 30240(a) because it causes significant disruption of habitat values.

However, if we don't approve the drainage devices and sandbags now with conditions for the applicant to prepare a long-term solution, there will be ongoing impacts both to ESHA due to erosion, and to water quality due to turbidity generated by erosion. The ongoing water quality impacts would be inconsistent with Section 30231, which states that "...The biological productivity and the quality of coastal waters...appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means...controlling runoff, ...maintaining natural vegetation buffer areas that protect riparian habitats..."

Thus, although the work will initially disturb ESHA, it will have benefits such as erosion control that will allow more ESHA to establish, will protect water quality, and, as conditioned, will ultimately lead to implementation of a long term solution to the erosion problem. Thus, on balance, it is more protective of coastal resources to approve the project than to deny it.

Ryan Todaro

From: Penny Elia [greenp1@cox.net]
Sent: Monday, April 16, 2007 4:24 PM
To: Ryan Todaro
Cc: John Dixon; Mark Massara; Marcia Hanscom; Andrew Willis; Karl Schwing; Marco Gonzalez; Meg Vaughn
Subject: Re: Staff Report - Hobo Aliso Ridge After-the-Fact Permit

1. Pads are usually the "approved buildable area within a lot" and the footprint of the structure.

2. According to John Tettemer & Associates submission of the site plan for the project (CDP 5-98-151), what you are referring to is termed "(4) construct berm and/or excavate for desilting basin per detail 2 on sheet 4." (This sheet 4 is missing from Tettemer's submittal.) These basins all indicated on the plan map with a #4.

Anything staff can do to eliminate the term "lots" or "pads" will be greatly appreciated as always by the Sierra Club.

Penny

On Apr 16, 2007, at 3:51 PM, Ryan Todaro wrote:

> Penny.....We'll be careful with the language we use and we'll be as
> clear as we can about what we think is permitted and what is not. Can
> you please explain what the problem is with the word pad? It's very
> descriptive of what is out there and I don't see how using that word
> would suggest that the pads are somehow permitted as building sites
> (which they aren't).
>
> -----Original Message-----
> From: Penny Elia [mailto:greenp1@cox.net]
> Sent: Monday, April 16, 2007 2:40 PM
> To: Ryan Todaro
> Cc: John Dixon; Mark Massara; Andrew Willis; Marcia Hanscom; Karl
> Schwing; Marco Gonzalez; Meg Vaughn
> Subject: Staff Report - Hobo Aliso Ridge After-the-Fact Permit
>
> Dear Ryan -
>
> We respectfully request that the terms "lots" and "pads" not be used
> within the language of the upcoming staff report. These labels are
> incorrect and misleading. The California Subdivision Map Act (CA
> Government Code 66410) states:
>
> ..."final map." When all of the conditions set out in the approved
> tentative map have been satisfied and when compliance is certified by
> city or county officials, the local agency will approve a final map.
> The subdivider may now record the map at the County Recorder's office.
> Lots within the subdivision cannot be sold and are not legal divisions
> of land until a final map has been recorded....
>
> The "Driftwood Estates" site, the focus of the permit, is located on
> the Hobo Aliso Ridge (a white hole/area of deferred certification).
> The sandbagged berms and related structures found on this site are all
> the product of unpermitted development and do not constitute "pads" or
> "lots."
>
> Thank you -

Ryan Todaro

From: Penny Elia [greenp1@cox.net]
Sent: Monday, April 16, 2007 2:40 PM
To: Ryan Todaro
Cc: John Dixon; Mark Massara; Andrew Willis; Marcia Hanscom; Karl Schwing; Marco Gonzalez; Meg Vaughn
Subject: Staff Report - Hobo Aliso Ridge After-the-Fact Permit

Dear Ryan -

We respectfully request that the terms "lots" and "pads" not be used within the language of the upcoming staff report. These labels are incorrect and misleading. The California Subdivision Map Act (CA Government Code 66410) states:

..."final map." When all of the conditions set out in the approved tentative map have been satisfied and when compliance is certified by city or county officials, the local agency will approve a final map. The subdivider may now record the map at the County Recorder's office. Lots within the subdivision cannot be sold and are not legal divisions of land until a final map has been recorded....

The "Driftwood Estates" site, the focus of the permit, is located on the Hobo Aliso Ridge (a white hole/area of deferred certification). The sandbagged berms and related structures found on this site are all the product of unpermitted development and do not constitute "pads" or "lots."

Thank you -

Penny
Sierra Club Task Force - Save Hobo Aliso
949-499-4499

October 1960

Site Graded

Archival photo from
City of Laguna Beach's Historic Files

(Flight 133V frames 21,23 and 27 from
Pacific Air Industries)

Exhibit 5A

October 1960

Site Graded

Zoom in on Archival photo from City of Laguna Beach's Historic Files

(Flight 133V frames 21,23 and 27 from Pacific Air Industries)

Exhibit 5B

LATHAM & WATKINS LLP

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Los Angeles, California 90071-1560
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www.lw.com

043668-0003

October 9, 2008

VIA FEDERAL EXPRESS

Honorable California Coastal Commissioners
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

Agenda Item Th14a

Re: Procedural Concerns Raised By The Hearing Of Driftwood Properties' Claim of Vested Rights Application (No. 5-07-412-VRC) on the October 16, 2008, Agenda Item No. Th14a; Response to Addendum to Staff Report Regarding Procedural Issues, dated October 2, 2008

Dear Honorable Commissioners:

We are writing on behalf of our client, Driftwood Properties, LLC, regarding some procedural issues and fairness and due process concerns with respect to the processing and consideration of Driftwood's pending Claim of Vested Rights Application (No. 5-07-412-VRC). That Claim of Vested Right Application is for a portion of the property generally known as Driftwood Estates and located at the northern terminus of Driftwood Drive, Laguna Beach, Orange County (the "Property"). The hearing on the Claim of Vested Rights Application is set for hearing on October 16, 2008. We understand that Commission counsel has advised some Commissioners that due to the pending enforcement matters regarding the Property, the Commissioners should limit the subject matter of, or refrain from engaging in, briefings from Driftwood related to Driftwood's Claim of Vested Rights Application.

For reasons set forth below, we believe that limiting the Commissioners' and an applicant's ability to discuss a claim of vested rights has policy, fairness, and due process ramifications and is inconsistent with Driftwood's Constitutional right to petition government. In light of this situation, and because resolution of the Claim of Vested Rights Application is not required unless the pending enforcement matters cannot be resolved cooperatively,[1] Driftwood

[1] In an effort to resolve the pending enforcement matters, Driftwood has agreed that it will not engage in further sandbag placement or vegetation removal on the Property until these matters are resolved by the Commission or a court.

Materials have been submitted to Coastal Commission staff

requests that the Commission either confirm Driftwood's vested rights at this time, or that the Commission allow Driftwood to *withdraw* its Claim of Vested Rights Application (without prejudice to resubmit) *or postpone* the hearing thereon (and the related enforcement issues) until such time as Driftwood's larger redevelopment proposal (for the entire 325 acre property of which the Property is a small part) comes before the Commission in approximately a year to eighteen months.

I. KEY PROCEDURAL BACKGROUND

As discussed in greater detail in Driftwood's letter responding to the Staff Report dated October 8, 2008 and Attachment A to this letter, Driftwood submitted the Claim of Vested Rights Application in an attempt to potentially resolve certain issues related to its ability to maintain the graded condition of the Property that has existed for 48 years, and replace soil and storm water control devices on the Property that have deteriorated over time, which were requested by the City of Laguna Beach. Moreover, by filing the Claim of Vested Rights Application, Driftwood sought to resolve certain issues relating to the Property outside the enforcement context (where Commission counsel commonly advises Commissioners against engaging in briefings). As discussed in Attachment A, for some time, Driftwood has had concerns about the fairness and neutrality of the process with respect to which the Commission has considered issues relevant to the Property and Driftwood's attempts to maintain the Property in compliance with the requirements of the City of Laguna Beach. As such, Driftwood filed a Claim of Vested Rights Application in an attempt to have certain issues considered by the Commission in a neutral non-enforcement forum.

In mid-September, Driftwood learned that Commission counsel advised some Commissioners not to discuss with Driftwood the substantive issues raised in Driftwood's Claim of Vested Rights Application with Driftwood and it became clear that Driftwood would not have an opportunity to finalize a settlement of the pending enforcement matters regarding the Property before any October 2008 hearing on its Claim of Vested Rights Application. Driftwood, therefore, sought to withdraw its Claim of Vested Rights Application to provide an opportunity to pursue such a settlement (reserving its right to resubmit in the future should settlement discussions break down).

In response to Driftwood's request to withdraw the Vested Rights Application, Commission staff informed Driftwood that because there is no regulation specifically permitting an applicant to withdraw a claim of vested rights application, Driftwood could not do so. (*See also* October 2, 2008 Addendum to the Staff Report a 1.) Driftwood disagrees with staff's interpretation of the regulations, but in response and as an alternative to withdrawal of the Claim of Vested Rights Application, Driftwood asked Commission staff to postpone the hearing on that application. Commission staff also would not allow Driftwood to postpone the hearing.

II. RESTRICTING EX PARTE COMMUNICATIONS REGARDING DRIFTWOOD'S CLAIM OF VESTED RIGHT APPLICATION HAS SIGNIFICANT IMPLICATIONS

No prohibition exists against ex parte communications with Commission members, including communications regarding enforcement proceedings and litigation. In fact, the Coastal Act expressly allows for such ex parte communications and provides specific procedures by which these communications should take place. Both the United States and California Constitutions protect the right to engage in these communications.[2] Any limitation of this important right raises significant concerns regarding fairness and due process and adversely affects an applicant's constitutional right to petition government.

This is especially true since all claims of vested rights have the potential to raise enforcement issues. A claim of vested rights generally applies to development that would have required a coastal development permit had the right to the development not been vested prior to enactment of the Coastal Act. (*See* Pub. Resources Code § 30608.) Thus, any dispute between Commission staff and an applicant over whether the applicant's rights to development have in fact vested (and the scope of those vested rights) likely will raise enforcement issues and bear on a potential or actual enforcement matter. Therefore, interfering with an applicant's right to petition the Commission regarding the applicant's claim of vested right, due to the existence of an enforcement matter or a potential enforcement matter, has significant policy, due process, and constitutional implications.

Commission staff also have regularly insisted that the Claim of Vested Rights Application and the enforcement matters are *unrelated.* If Commission staff believes that the two matters are unrelated, then ex parte communications regarding the Claim of Vested Rights Application should not be affected by the enforcement matters.

Finally, as we have indicated in our letter responding to the Staff Report dated October 8, 2008, ultimately, both Driftwood's Claim of Vested Rights Application and the enforcement actions brought by Commission earlier this year (which relate to the 8.1-acre Property) are both about a larger redevelopment proposal (for a 325-acre property that includes the Property). This proposal will be before the Commission in approximately a year to eighteen months. The impact of having the pending enforcement action and the resulting Claim of Vested Rights Application in front of the Commission before the larger redevelopment proposal is that the Commission does not have an opportunity to consider (1) the larger redevelopment project (for the entire 325 acres) and (2) associated issues that have significant policy implications that could resolve the enforcement matters in a non-enforcement forum before the Commission must consider these other issues. Such a piecemeal approach not only prevents the Commission's holistic

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2 *See* Pub. Resources Code § 30320, 30329, 30322, 30324; *Matossian v. Fahmie* (1980) 101 Cal.App.3d 128, 135 ["The right to petition to governmental agencies, like freedom of speech, of the press, and of religion, has 'a paramount and preferred place in our democratic system,'" which is protected by both the United States and California Constitutions]; *see also City of Long Beach v. Bozek* (1982) 31 Cal.3d 527, 532.

consideration of the redevelopment proposal for the entirety of the property and related policy issues, it risks interference with Driftwood's right to participate in full and fair briefings with Commissioners about the Vested Rights Application and the redevelopment project as a whole (which includes the Property).

III. NOTHING BLOCKS THE COMMISSION FROM ALLOWING DRIFTWOOD TO WITHDRAW OR POSTPONE

The Commission can allow Driftwood to withdraw its Claim of Vested Rights Application (without prejudice to Driftwood's right to resubmit in the future) or the Commission can postpone the hearing on the Claim of Vested Rights Application until the larger redevelopment proposal comes before the Commission in a year to eighteen months. No regulations state anything to the contrary. In fact, precedent exists for such a postponement. (*See* Exhibit 1 at 8-9 [Malibu Valley Farms, 4-00-279-VRC Staff Report, dated November 2, 2006] [Hearing on claim of vested rights application postponed for over five years pending processing of a coastal development permit application for other development on the site].)

IV. CONCLUSION

In sum, Driftwood requests that the Commission confirm Driftwood's Claim of Vested Rights Application. In the event that the Commission is not prepared to do so, Driftwood respectfully requests that the Commission either allow Driftwood to withdraw its Claim of Vested Rights Application or postpone the hearing thereon until such time when settlement negotiations regarding the enforcement matter conclude or the larger redevelopment proposal is in front of the Commission in a year to eighteen months.

Driftwood appreciates your attention to this matter and, should the need arise, please call me with any questions at (213) 891-8722.

Very truly yours,

Rick Zbur

Rick Zbur
of LATHAM & WATKINS LLP

Attachments
cc: Karl Schwing, CCC
Lisa Haage, Chief of Enforcement, CCC
Hope Schmeltzer, CCC
John Mansour, The Athens Group
Greg Vail, The Athens Group

ATTACHMENT A: BACKGROUND AND EFFORTS TO RESOLVE COMMISSION STAFF'S CONCERNS

This attachment provides critical factual background regarding the larger context under which Driftwood's Claim of Vested Rights Application was filed.

A. Driftwood's 325-Acre Redevelopment Proposal

Driftwood purchased the 325 acres (which includes the Property) in 2004 to pursue a comprehensive redevelopment plan for the entire 325 acres. The redevelopment proposal has significant environmental benefits, including dedication of approximately 251 of the 325 acres as open space, creation of a new Mountains-to-Sea Aliso Creek Trail Connection (connecting over 17,000 acres of publicly accessible open space), implementation of long-term Resource Management Plans for 325 acres, and restoration of two-thirds of a mile of Aliso Creek. The significant environmental benefits included in the redevelopment proposal generally align with the types of projects frequently undertaken by the Driftwood's project managers.[3]

After Driftwood purchased the Property, Driftwood cooperated with the City of Laguna Beach, the Commission, and Commission staff in an effort to appropriately maintain the Property to comply with erosion, storm water, and fire protection requirements of the City of Laguna Beach.

B. Commission Staff Asks Driftwood To Submit A Coastal Development Application, Recommends Denial, and Then Issues Notices Of Violation

Driftwood purchased the Property in October 2004 from the Esslinger Family Trust (the prior owner). Shortly thereafter, the City of Laguna Beach Water Quality Department directed Driftwood to replace sandbags that were placed on the Property by the prior owner in the 1990s to protect nearby persons and property from flooding. The City required the replacement of the sandbags because they had deteriorated and were in poor condition due to sun exposure and the passage of time. In good faith and under the City's direction, Driftwood replaced 5,500 sandbags in 2004. In 2005, emergency flooding concerns prompted the City to direct Driftwood to replace 500 additional sandbags. At that point, Driftwood asked Commission staff if a coastal development permit would be required to place the additional sandbags as required by the City, and Commission staff advised Driftwood that it believed a coastal development permit was needed for placement of the 500 additional sandbags, and that an "after-the-fact" coastal development permit was needed for the prior owner's placement of the erosion control measures and Driftwood's initial sandbag replacement efforts in 2004 pursuant to the City's direction.

Driftwood applied for the coastal development permits as directed by the Commission staff. During the staffs' processing of the application, Driftwood became concerned about the fairness of the process when it learned that the Commission's permitting staff allowed an adjacent neighbor to the Property, who is also an ardent opponent of the Project, to play a role in its decision-making process. Through documents produced by Commission staff in response to

---

[3] The Athens Group, the project managers for Driftwood, has long standing environmental credentials and has received numerous accolades for their past projects, including "First Environmentally Conceived Resort in North America" from Architectural Digest in 1984 for the Loews Ventana Canyon Resort and the "2005 Annual Environmental Responsibility Award" for the Hualailai at Historic Ka'upulehu. The Athens Group also developed the Montage Resort and Spa in Laguna Beach, which is widely considered to have benefited the environment in Laguna Beach.

Attachment A

Driftwood's request, and then after a Public Records Act request, Driftwood learned that as it was working cooperatively and in good faith with Commission staff to obtain coastal development permits to replace sandbags (at the request of the City of Laguna Beach), Commission staff was in frequent communication with Penny Elia. (*See* Exhibit 2 at 1-6.) During this time, Commission staff appears to have shared documents with Ms. Elia (at times when they did not share documents with Driftwood) and corresponded with her regarding how to frame certain issues in the staff report to describe the conditions on the Property. (Exhibit 2 at 2, 6.) For example, Ms. Elia wrote to Commission staff, "In reviewing the many, many files that you were so kind to provide me with the other day, I was able to cross-reference a lot of different documents, submittals and emails." (Exhibit 2 at 2 [March 8, 2007 email from P. Elia to Commission staff].) Ms. Elia also wrote, "We respectfully request that the terms 'lots' and 'pads' not be used in the language of the upcoming staff report. These terms are incorrect and misleading." Commission permitting staff responded, "[w]e'll be careful with the language we use." (Exhibit 2 at 6 [April 16, 2007 email from P. Elia to Commission staff drafting staff report].)

Staff appear to have been prepared to recommend approval of Driftwood's applications until April 16, 2008. (October 9, 2008 Letter from R. Zbur to K. Schwing Responding to Staff Report, Ex. 4 at 5 [April 16, 2007 email from K. Schwing to various Commission staff members].) However, not long after Ms. Elia informed Commission permitting staff that Driftwood was moving forward with the Aliso Redevelopment Plan for the entire 325-acre property (of which the Property is a part), and just days before the Commission's hearing on Driftwood's application, Commission staff unexpectedly indicated to Driftwood that the staff would recommend a denial of the application. (*See* Exhibit 2 at 4 [April 5,2007 P. Elia email to Commission staff]; Attachment 97 to Driftwood's May 9, 2008 Statement of Defense [Declaration of T. Ly dated April 23, 2008]; *see also* Attachment 43 and Attachment 44 to Driftwood's May 9, 2008 Statement of Defense.) As a result, Driftwood withdrew its application.

Days after Driftwood withdraw its application for coastal development permits, Commission staff sent two notices of violation to Driftwood (Notices of Intent to Record a Notice of Violation numbers V-5-06-029 and V-5-06-006 (collectively, "Notices")) concerning the activities on the Property which, as described above, largely occurred before Driftwood purchased the Property in 2004. Specifically, in May 2007, Commission staff alleged Coastal Act violations related to two 1995 lot line adjustments by the prior owner of the Property, brush clearing, and the placement of sandbags and erosion control devices on the Property by the prior owner and the replacement of some sandbags by Driftwood (to prevent impacts to surrounding neighbors and local water quality). In support of the alleged violations and in the face of empirical evidence to the contrary, Commission staff alleged that the historically graded area on the Property (which had been graded 48 years earlier) constituted ESHA under the Coastal Act under the theory that, even though the historically graded area did not support ESHA today, that area ***might***, some day in the future do so, and therefore should now be classified as ESHA.

In June 2007, Driftwood submitted a detailed response to the Commission regarding the alleged violations, establishing that neither Driftwood nor the prior owner acted in violation of the Coastal Act. The June 2007 response letter also clearly stated Driftwood's commitment to

work cooperatively with staff and reach a mutually satisfactory resolution through a voluntary consent decree order. In the following months, although Driftwood disagreed with Commission staff's position regarding the alleged Coastal Act violations and the use of the "prospective ESHA" theory to evaluate the extent of ESHA on the historically graded area, Driftwood continued to voice its willingness to settle the issue cooperatively. Driftwood representatives participated in a number of telephone calls and meetings with Commission staff in an effort to reach a cooperate resolution of the enforcement matters. On March 27, 2008, Commission staff issued a Notice of Intent to Record a Notice of Violation of the Coastal Act and to Commence Cease and Desist Order and Restoration Proceedings against Driftwood.[4] Driftwood provided its Statement of Defense to the Commission staff on May 9, 2008.

As noted above, since receiving the notices of violation in May 2007, in an attempt to resolve Commission enforcement staff's concerns about the methods of storm water and erosion control used on the Property, Driftwood has attempted to work with the Commission enforcement staff in an attempt to resolve the enforcement matters cooperatively. These settlement discussions moved forward significantly in April 16, 2008 when Driftwood representatives met with Commission Enforcement Staff in San Francisco on the enforcement matter. On April 21, 2008, at Commission staff's request, Driftwood submitted a proposal to replace the sandbags with a vegetative solution. On August 8, 2008, Commission staff asked Driftwood to provide a native plant palette. Driftwood promptly provided the palette on August 13, 2008. Commission staff then informed Driftwood that due to the staff constraints it would not be able to respond or meet until early October.

C. Driftwood Submits Claim Of Vested Rights Application To Non-ESHA Portion Of Historically Graded Property To Protect Its Constitutional Rights

Between June 2007 (Driftwood's initial response to the Notices) and March 2008 (issuance of Notice of Intent to Record a Notice of Violation), in an attempt to have certain issues considered by the Commission in a neutral non-enforcement forum and to protect its due process rights and its right to petition, Driftwood filed a Claim of Vested Rights Application. Driftwood did this by submitting a Claim for Vested Rights Application which is limited to the 5.8 acres of the 8.1-acre, historically graded Property.

Driftwood submitted its original Claim of Vested Rights Application on November 20, 2007 and responded promptly to correspondence from the Commission staff requesting additional information. On March 17, 2008, the Commission staff sent Driftwood a Second Notice of Incomplete Claim of Vested Rights, requesting additional items by April 1, 2008 "to complete [Driftwood's] claim" and stating that the application remains unfiled, but that if the Commission staff "do not receive any additional information by that date and/or the information [Commission staff] have received is incomplete or unsatisfactory, Commission staff may still

[4] On January 25, 2008, Commission staff did send Driftwood a letter regarding an alleged violation stemming from a 1995 lot line adjustment by the prior owner, detailing the reasons that the Commission still considered the 1995 lot line adjustments a violation of the Coastal Act. On February 26, 2008, Driftwood provided a response to the concerns raised in the letter. The Commission enforcement staff has yet to respond to Driftwood on this issue.

choose to deem the application 'filed' and proceed with a hearing before the Commission using whatever information is available at that time." (Attachment 87 to Driftwood's May 9, 2008 Statement of Defense [March 17,2008 Letter from K. Schwing to G. Vail and R. Zbur].) Driftwood responded by April 1, 2008, and then on June 2, 2008, Driftwood supplemented its Application for a Claim of Vested Right to apply only to 5.8 acres of the Property, omitting areas its biologist found to contain ESHA presently.

Not until it received the third Staff Report in this matter on October 2, 2008 was Driftwood informed that its "application was deemed complete on June 9, 2008." (October 2, 2008 Addendum to Staff Report at 3.) On July 8, 2008, Driftwood received Notice of Initial Determination finding that Driftwood's claim for vested rights had "not been sufficiently substantiated and that it should be denied" and scheduling the matter for an August 2008 hearing. (Exhibit 3 [July 8, 2008 Letter from T. Henry to G. Vail].)

D. Commission Staff Postpones Hearing In July 2008

In July 2008, Commission staff calendared Driftwood's Claim of Vested Rights Application for hearing in August 2008. Shortly thereafter, on July 30, 2008, Driftwood asked Commission staff to postpone the hearing until October 2008 to give Driftwood and enforcement staff sufficient time to work out a cooperative settlement and potentially avoid having a hearing on the Claim of Vested Rights Application. At the same time, Driftwood informed Commission staff that in the event this issue is resolved cooperatively, Driftwood was prepared to withdraw its Claim of Vested Rights Application since resolution in the pending related enforcement actions would obviate the need for Driftwood to confirm its vested rights in the historically graded area at this time.

Unfortunately, although Driftwood has requested meetings on repeated occasions with enforcement staff to try to resolve the pending enforcement matters cooperatively, little progress was made toward resolution since Driftwood's proposal was submitted, as Commission enforcement staffing on the matter changed and the new staff member reportedly was out of the office for a number of weeks.

E. Commission Refuses To Allow Driftwood To Withdraw Or Postpone October 2008 Hearing On Claim Of Vested Rights Application

Commission staff then scheduled the Claim of Vested Rights Application for an October 2008 hearing. Shortly thereafter, on September 24, 2008, Driftwood asked to withdraw its Claim of Vested Rights Application, citing the fact that Driftwood did not believe it was necessary at this point for the Commission to expend resources on determining a novel policy issue in a potentially contentious hearing. Instead, because Driftwood remains hopeful that the enforcement actions can be resolved cooperatively, Driftwood asked Commission staff to withdraw the Claim of Vested Rights Application, reserving Driftwood's right to re-submit in the future if settlement discussions break down.

Commission staff informed Driftwood that since there is no regulation specifically permitting an applicant to withdraw a claim of vested rights application, staff would not permit the withdrawal. (October 2, 2008 Addendum to the Staff Report at 1.)

Driftwood does not believe that Commission regulations should be interpreted to prevent withdrawal of its Claim of Vested Rights Application, but if Commission staff decides that withdrawal is not permitted, Driftwood respectfully requests that the hearing for the Claim of Vested Rights Application be postponed until such time as discussions with Commission staff aimed at resolving the enforcement action break down or the Commission considers the coastal development permit application for redevelopment of the entire 325-acre property (including the Property).

F. Project Opponent Appears To Be Serving As A *De Facto* Commission Staff Member

Throughout this time, Commission staff has corresponded extensively with Penny Elia, a neighbor of the Property, and ardent Driftwood opponent, regarding items such as how to frame issues in Commission staff reports, and Commission staff has relied on (without confirming facts on its own) information she has provided about the Property (and the history of the Property) when crafting its staff reports and reaching important conclusions affecting Driftwood's property. (See Attachment 95 to Driftwood's May 9, 2008 Statement of Defense; *see generally*, Exhibit 2.) For example, Ms. Elia provided Commission staff with a legal brief titled "Brief in Support of Notice of Incomplete Claim of Vested Rights," an extensive number of photos of the Property (including a number of historic photos), legal research into historic codes, and other documentation to support the Commission staff's findings that Driftwood does not have a claim for a vested right in the graded pads. (*See* Exhibit 2 at 14-17 [Email exchange between P. Elia and L. Warren regarding 42-page fax sent to Commission staff and asking to teleconference regarding the materials] ["Penny, I would be happy to talk to you about the brief you sent yesterday."]; Exhibit 4 [Brief].) In December 2007, Ms. Elia sent a long email with factual and legal information, thanking the staff member for his time on the phone and stating "[s]ince a vested rights application is new to you, I wanted to share a few thoughts." (Exhibit 2 at 9 [December 5, 2007 email from P. Elia to K. Schwing, coping other Commission staff members].) Ms. Elia has provided so much assistance, she appears to be operating as a *de facto* staff member who is ardently opposing any development or activities of any kind on the Property, including City-required fuel modification protective of the surrounding homes.

Additional correspondence demonstrates that Ms. Elia apparently received open access to Commission staff files, while Driftwood struggled for over six months to get access to select Commission files related to both the enforcement actions and the Claim of Vested Rights Application. (*See* Exhibit 2 at 2 [March 8, 2007 email]; Attachment 99 to Driftwood's May 9, 2008 Statement of Defense [Decl. of M. Farrar re attempts to retrieve documents from Commission]; Attachments 92 and 93 to Driftwood's May 9, 2008 Statement of Defense [April 11, 2008 Request for Documents and Public Records Act request].) Ms. Elia also continually provided Commission staff with updates on Driftwood's comprehensive redevelopment plan for the entire 325-acre property.

Materials have been submitted to Coastal Commission staff

Ms. Elia also appears to have played a role in crafting the biological report that Commission staff is relying on in recommending that the Commission record a notice of violation against the Property. As far as we know, Ms. Elia is not a biologist. However, the biological memorandum authored by Commission biologist John Dixon regarding the site's conditions and the status of ESHA on the Property, which was completed without a site visit by Dixon, indicates that its preparer personally consulted with Ms. Elia prior to finalizing it and relied on that consultation. (*See* Attachment 53 to Driftwood's May 9, 2008 Statement of Defense at 2.) The Dixon memorandum also relies on a survey by another neighbor with unknown credentials, Mr. Almanza. (*Id.; see also* Attachment 95 to Driftwood's May 9, 2008 Statement of Defense.)

Permitting adjacent residential neighbors and project opponents with personal and potential pecuniary interest in a matter being processed by the Commission staff to become *de facto* members of Commission staff raises serious concerns about fairness and due process in the Commission's involvement with the Driftwood property and its vested property rights, including staff's decision to recommend denial of Driftwood's Claim of Vested Rights Application.

CALIFORNIA COASTAL COMMISSION
SOUTH CENTRAL COAST AREA DISTRICT
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VENTURA, CA 93001
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Filed: 11/06/00
Staff: LF-V
Staff Report: 11/02/06
Hearing Date: 11/15/06
Commission Action:

W 15a

CLAIM OF VESTED RIGHTS

STAFF REPORT AND RECOMMENDATION

CLAIM NO: 4-00-279-VRC

CLAIMANT: MALIBU VALLEY FARMS, INC.

PROJECT LOCATION: 2200 Stokes Canyon Road, Calabasas, Los Angeles County.

ASSESSOR'S PARCEL NO.: 4455-028-044

DEVELOPMENT RIGHT CLAIMED: Right to "conduct agricultural and livestock activities on the property that were commenced prior to 1930," right to build new structures in connection with that use, and right to construct, operate and maintain the equestrian facility that currently exists on the property. Structures at site include enclosed 1,440 sq. ft. horse barn, 36 metal pipe corrals, 2,660 sq. ft. mare motel, six tack rooms, three cross-tie areas, two riding arenas, ten parking stalls, fencing, hot walker, and three storage structures.

SUBSTANTIVE FILE DOCUMENTS: Photographs of site taken November 19, 1999 and March 2, 2000; Coastal Development Permit Application File No. 4-02-231 (Malibu Valley Farms, Inc.); Violation File No. V-4-MAL-00-001; Exemption Letter No. 4-98-125-X (Boudreau); Letter from Commission to Brian Boudreau regarding revocation of Exemption Letter No. 4-98-125-X, dated January 22, 1999; Commission letters to Cox, Castle & Nicholson dated August 18, 2000, October 6, 2000, February 23, 2001, and March 19, 2001; L.A. County Code, Title 22, Section 22.56.1540 and Title 26, Sections 101–106; aerial photographs taken January 24, 1977 and November 3, 1952.

ACTION: Commission Hearing and Vote

SUMMARY OF STAFF RECOMMENDATION

Staff recommends **denial** of the claim of vested rights. Malibu Valley Farms, Inc. ("Malibu Valley Farms") claims a vested right to construct operate and maintain an equestrian facility, i.e., a facility for boarding, training and breeding horses, that includes numerous structures based on claims that agricultural and livestock activities were conducted on the site since the 1930s.

The Coastal Act requires a coastal development permit prior to undertaking development. The vested rights exemption allows the completion or continuance of development that was commenced prior to the Coastal Act without a coastal development permit if all other required permits were obtained and, in reliance on those permits, the owner incurred substantial liabilities and commenced construction. Malibu Valley Farms does not provide any evidence that it obtained permits and, in reliance on those permits, began construction of the equestrian facility prior to the effective date of the Coastal Act (January 1, 1977). Nor does Malibu Valley Farms provide any evidence that the structures on the site existed (or are replacements of what existed) on the site just prior to the effective date of the Coastal Act. Aerial photographs of the property taken in 1977 show that there were no structures on the property at that time.

Instead, Malibu Valley Farms has provided a number of declarations that assert that oat hay was grown on the property from 1947 through 1978, that sheep and cattle were grazed on the site at various times between 1952 and 1978, that there were fencing and feeding structures for livestock between 1974 and 1978 and that these structures were repeatedly placed and removed, and that there may have been a barn somewhere on or near the property up to 1975. There is no evidence that the fencing and feeding structures and barn were present on the site when the Coastal Act became effective. Nor is Malibu Valley Farms claiming a vested right to graze sheep or cattle or to grow oat hay or other crops. Rather, Malibu Valley Farms claims that because the property was used for growing hay and sheep and cattle grazing prior to passage of the Coastal Act, Malibu Valley Farms has a vested right to use the property as an equestrian facility after passage of the Coastal Act and to build any structures that support an equestrian facility without coastal development permits. A vested right exemption from coastal development permits applies only to development that was permitted and commenced prior to the Coastal Act. There is no vested right to undertake new development without a permit on grounds that the development facilitates a pre-Coastal Act use of the property. Malibu Valley Farms' claim is in effect, a claim to a right to (1) build new structures after enactment of the Coastal Act without coastal permits and to (2) use its property in a manner that is consistent with only the most general description of the alleged pre-Coastal use. This is clearly unsupported by the Coastal Act. For these reasons, staff concludes that there is no basis to find a vested right to the existing structures on the property.

I. STAFF RECOMMENDATION FOR DENIAL OF CLAIM

The Executive Director has made an initial determination that Claim of Vested Rights 4-00-279-VRC has not been substantiated. Staff recommends that Claim of Vested Rights 4-00-279-VRC be rejected.

Motion: *"I move that the Commission determine that Claim of Vested Rights 4-00-279-VRC is substantiated and the development described in the claim does not require a Coastal Development Permit."*

Staff recommends a **NO** vote. Failure of the motion will result in a determination by the Commission that the development described in the claim requires a Coastal Development Permit and in the adoption of the resolution and findings set forth below. The motion passes only by an affirmative vote of a majority of the Commissioners present.

Resolution for Denial of Claim:

The Commission hereby determines that Claim of Vested Rights 4-00-279-VRC is not substantiated and adopts the Findings set forth below.

II. FINDINGS AND DECLARATIONS

A. Legal Authority and Standard of Review

The Coastal Act requires that a coastal development permit be obtained before development is undertaken in the coastal zone. Coastal Act section 30600(a)[1] states:

> ***. . . in addition to obtaining any other permit required by law from any local government or from any state, regional, or local agency, any person . . .wishing to perform or undertake any development in the coastal zone, . . . shall obtain a coastal development permit.***

Coastal Act section 30106 defines the term "development" as:

> ***. . . the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including but not limited to, subdivision pursuant to the Subdivision Map Act ... change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, ...***

[1] The Coastal Act is at Public Resources Code sections 30,000 to 30,9000.

One exception to the general requirement that one obtain a coastal development permit before undertaking development within the coastal zone is that if one has obtained a vested right in the development prior to enactment of the Coastal Act, a permit is not required. Section 30608 of the Coastal Act states:

> ***No person who has obtained a vested right in a development prior to the effective date of this division or who has obtained a permit from the California Coastal Zone Conservation Commission pursuant to the California Coastal Act of 1972 (commenting with Section 27000) shall be required to secure approval for the development pursuant to this division; provided, however, that no substantial change may be made in any such development without prior approval having been obtained under this division.***

The effective date of the division, i.e., the Coastal Act, for the site at issue is January 1, 1977. The subject property was not subject to the Coastal Zone Conservation Act of 1972 (aka Proposition 20, "the Coastal Initiative") and therefore was not required to obtain a coastal development permit from the California Coastal Zone Conservation Commission. Pursuant to Section 30608, if a person obtained a vested right in a development on the subject site prior to January 1, 1977, no Coastal Development Permit (CDP) is required for that development. However, no substantial change in any such development may be made until obtaining either a CDP, or approval pursuant to another provision of the Coastal Act.

The procedural framework for Commission consideration of a claim of vested rights is found in Sections 13200 through 13208 of Title 14 of the California Code of Regulations. These regulations require that the staff prepare a written recommendation for the Commission and that the Commission determine, after a public hearing, whether to acknowledge the claim. If the Commission finds that the claimant has a vested right for a specific development, the claimant is exempt from Coastal Development Permit requirements for that specific development only. Any substantial changes to the exempt development after January 1, 1977 will require a CDP. If the Commission finds that the claimant does not have a vested right for the particular development, then the development is not exempt from CDP requirements.

Section 30608 provides an exemption from the permit requirements of the Coastal Act if one has obtained a vested right in a development. Neither the Coastal Act nor the Commission's regulations articulate any standard for determining whether a person has obtained such a right. Thus, to determine whether the Coastal Act's vested rights exemption applies, the Commission relies on the criteria for acquisition of vested rights as developed in the case law applying the Coastal Act's vested right provision, as well as in common law vested rights jurisprudence. That case law is discussed below.

""The vested rights theory is predicated upon estoppel of the governing body."" *Raley v. California Tahoe Regional Planning Agency* (1977), 68 Cal.App.3d 965, 977. [2] Equitable estoppel may be applied against the government only where the injustice that would result from a failure to estop the government "is of sufficient dimension to justify any effect upon public interest or policy" that would result from the estoppel. *Raley*, 68 Cal.App.3d at 975.[3] Thus, the standard for determining the validity of a claim of vested rights requires a weighing of the injury to the regulated party from the regulation against the environmental impacts of the project. *Raley*, 68 Cal.App.3d at 976.

The seminal decision regarding vested rights under the Coastal Act is *Avco Community Developers,Inc. v. South Coast Regional Commission* (1976) 17 Cal.3d 785. In *Avco*, the California Supreme Court recognized the long-standing rule in California that if a property owner has performed substantial work and incurred substantial liabilities in good faith reliance upon a permit issued by the government, he acquires a vested right to complete a construction in accordance with the terms of the permit. The court contrasted the affirmative approval of the proposed project by the granting of a permit with the existence of a zoning classification that would allow the type of land use involved in the proposed project. The court stated it is beyond question that a landowner has no vested right in existing or anticipated zoning. *Avco, supra,* at 796; *accord, Oceanic Calif., Inc. v. North Central Coast Regional Com.* (1976) 63 Cal.App.3d 357.

The acquisition of a vested right to continue an activity without complying with a change in the law thus depends on good faith reliance by the claimant on a governmental representation that the project is fully approved and legal. The scope of a vested right is limited by the scope of the governmental representation on which the claimant relied, and which constitutes the basis of the estoppel. One cannot rely on an approval that has not been given, nor can one estop the government from applying a change in the law to a project it has not in fact approved. Therefore, the extent of the vested right is determined by the terms and conditions of the permit or approval on which the owner relied before the law that governs the project was changed. *Avco Community Developers, inc. v. South Coast Regional Commission, supra*, 17 Cal.3d 785.

There are many vested rights cases involving the Commission (or its predecessor agency). The courts consistently focused on whether the developers had acquired all of the necessary government approvals for the work in which they claimed a vested right, satisfied all of the conditions of those permits, and had begun their development before the Coastal Act (or its predecessor) took effect.[4] The frequently cited standard for

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[2] Quoting Spindler Realty Corp. v. Monning, 243 Cal. App.2d 255, 269, quoting Anderson v. City Council, 229 Cal. App.2d 79, 89.

[3] Quoting City of Long Beach v. Mansell, 3 Cal. 3d462, 496-97.

[4] See, e.g., Patterson v. Central Coast Regional Commission (1976), 58 Cal. App. 3d. 833; Avco Community
Developers, Inc. v. South Coast Regional Commission, 17 Cal.3d 785; Tosh v. California Coastal Commission
(1979) 99 Cal.App.3d 388; Billings v. California Coastal Commission (1980) 103 Cal.App.3d 729. Halaco Engineering Co. v. South Central Coast Regional Commission (1986), 42 Cal. 3d 52 (metal recycling); Monterey Sand Co., Inc. v. California Coastal Commission (1987), 191 Cal. App. 3d 169 (sand dredging).

establishing a vested right is that the claimant had to have "performed substantial work and incurred substantial liabilities in good faith reliance upon a permit issued by the government" in order to acquire a vested right to complete such construction. Avco Community Developers, Inc. v. South Coast Regional Commission (1976), 17 Cal.3d 785, 791.

Based on these cases, the standard of review for determining the validity of a claim of vested rights is summarized as follows:

1. The claimed development must have received all applicable governmental approvals needed to undertake the development prior to January 1, 1977. Typically this would be a building permit or other legal authorization, and

2. The claimant must have performed substantial work and/or incurred substantial liabilities in good faith reliance on the governmental approvals. The Commission must weigh the injury to the regulated party from the regulation against the environmental impacts of the project and ask whether such injustice would result from denial of the vested rights claim as to justify the impacts of the activity upon Coastal Act policies. (*Raley, supra*, 68 Cal.App.3d at 975-76).

There is also legal authority that suggests that only the person who obtained the original permits or other governmental authorization and performed substantial work in reliance thereon has standing to make a vested right claim. (*Urban Renewal Agency v. California Coastal Zone Conservation Commissio*n (1975) 15 Cal.3d 577).

The burden of proof is on the claimant to substantiate the claim of vested right. (14 CCR § 13200). If there are any doubts regarding the meaning or extent of the vested rights exemption, they should be resolved against the person seeking the exemption. *(Urban Renewal Agency v. California Coastal Zone Conservation Commission* (1975) 15 Cal.3d 577, 588). A narrow, as opposed to expansive, view of vested rights should be adopted to avoid seriously impairing the government's right to control land use policy. *(Charles A. Pratt Construction Co. v. California Coastal Commission* (1982) 128 Cal.App.3d 830, 844, *citing, Avco v. South Coast Regional Commission* (1976) 17 Cal.3d 785, 797). In evaluating a claimed vested right to maintain
a nonconforming use (i.e., a use that fails to conform to current zoning), courts have stated that it is appropriate to "follow a strict policy against extension or expansion of those uses." *Hansen Bros. Enterprises v. Board of Supervisors* (1996)12 Cal.4th 533, 568; *County of San Diego v. McClurken* (1957) 37 Cal.2d 683, 687).

B. Background Regarding Property

1. The Property

The subject property is an approximately 31.02-acre parcel at the northeast corner of Mulholland Highway and Stokes Canyon Road in the Santa Monica Mountains area of unincorporated Los Angeles County **(Exhibit 1)**. The parcel is bisected by the coastal zone boundary. The location of the parcel is shown on the "boundary determination" for the property that the Coastal Commission prepared in April 2000 **(Exhibit 3)**. Approximately 80% of the parcel is located in the coastal zone and is subject to the Coastal Commission's jurisdiction. This staff report only addresses development on the part of the property (or "site") at 2200 Stokes Canyon Road that is located in the coastal zone.

Stokes Canyon Creek, an intermittent blue-line stream recognized by the United States Geological Survey (USGS), runs in a southwesterly direction through the western half of the parcel. The parcel area east of the creek consists of mountainous terrain containing chaparral, oak woodland, and annual grassland habitats; the parcel area west and south of the creek is level and contains an approximately six-acre equestrian facility.

The facility is used for breeding, training, and boarding horses, and contains two large riding arenas, fencing, a dirt access road and two at-grade crossings through Stokes Creek, an approximately 2,000 sq. ft. parking area, an approximately 20,000 sq. ft. fenced paddock, 36 pipe corrals, six tack rooms, a 1,440 sq. ft. barn, 2,660 sq. ft. mare motel, two cross tie areas and a cross tie shelter, a hot walker, and three storage units. The number of horses boarded at the site is unknown. A March 2005 Draft Environmental Impact Report (EIR) prepared for the proposed Malibu Valley Inn and Spa, which was to be located nearby, estimated that an average of 50 horses were stabled on the project site at that time; however, the existing site facilities could accommodate a larger numbers of horses.

The equestrian facility is located in and adjacent to Stokes Creek. The central and southern portions of the facility are linked by two dirt access roads with at-grade crossings through Stokes Creek. Several pipe corrals are located immediately adjacent to the creek, as are the paddock, barn, a storage container, tack room, and cross-tie areas. The rest of the structures are located between approximately 20 and 50 feet from creek and/or riparian canopy.

The subject property is currently owned by Malibu Valley Farms, Inc. and is identified as APN Number 4455-028-044. Malibu Valley Farms, Inc., whose president is Brian Boudreau, acquired the property in February 2002 from Robert K. Levin (via an unrecorded grant deed). Levin apparently acquired the property from Charles Boudreau, or a member of the Boudreau family, around 1996. Charles Boudreau, or a member of the Boudreau family, apparently acquired the property from the Claretian Mission around 1978.

2. Previous Commission Action

On November 20, 1998, Brian Boudreau, president of Malibu Valley Farms, Inc., submitted an exemption request for replacement of pipe corrals and related improvements that had been destroyed by wildfire in 1996. In the letter, Boudreau stated that the proposed replacement structures did not expand "the horse farming activities which have been conducted on the land for the past 23 years" **(Exhibit 4)**. On December 7, 1998, the Commission issued Exemption Letter No. 4-98-125-X for replacement of 14 pipe corrals (totaling 2,500 sq. ft) at the site **(Exhibit 5)**. However, on December 15, 1998, Commission staff received a copy of a notice of violation letter, issued by the Los Angeles County Department of Regional Planning to Malibu Valley Farms, Inc. on September 29, 1998, for operation of a horse boarding facility without the required permits and inconsistent with required setbacks **(Exhibit 6)**. In addition, Commission staff reviewed an aerial photograph of the the site from January 24, 1977 and determined that the equestrian facility on the site was constructed after the January 1, 1977 effectiveness date of the Coastal Act, without benefit of a coastal development permit **(Exhibit 10)**. Exemptions from the Coastal Act's permit requirements for replacement of structures destroyed by disaster (Section 30610(g)) only apply to structures that were either legally constructed prior to the Coastal Act, or were constructed after the Coastal Act with the appropriate authorization under the Act

Commission staff contacted Mr. Boudreau on January 14, 1999 and sent him a letter dated January 22, 1999 informing him that the exemption was revoked. The letter also stated that a Coastal Development Permit (CDP) is required for the horse riding area, polo field, numerous horse corrals, barn, and accessory buildings at the site and directed the applicant to submit an CDP application requesting after-the-fact approval of the unpermitted development **(Exhibit 7)**.

In November 1999, several Coastal Commission staff members conducted an inspection at the site and took photographs of the site. On March 2, 2000, Coastal Commission staff members conducted another inspection of the site from Stokes Canyon Road and Mulholland Highway, and took photographs of the site. During this inspection, a Commission staff member observed that construction was going on at the property. She observed stacks of irrigation sprinklers and 20 foot long pipes that workers were carrying onto the property. In March 2000, Commission staff notified Mr. Boudreau that it intended to initiate cease and desist order proceedings regarding the development at the site. Mr. Boudreau, Malibu Valley Farms, Inc., and Robert Levin, the owner of the property at the time, submitted a Statement of Defense dated April 10, 2000. The Statement of Defense states that "horses have been raised and trained on the property since the mid 1970s." (*Id.* Para. 5).

On June 13, 2000, Malibu Valley, Inc. (a separate corporation also owned by Mr. Boudreau) submitted the current Claim of Vested Rights application **(Exhibit 2)**. A public hearing on the application was scheduled for the February 2001 Commission meeting, with a staff recommendation of denial. On February 15, 2001, at the applicant's request, the hearing on the application was continued pending processing of

a coastal development permit application for the unpermitted development on the site **(Exhibit 8)**. During this time the application was amended to change the applicant from Malibu Valley, Inc. to Malibu Valley Farms, Inc. with Robert Levin as co-applicant. In March 2002, Mr. Levin transferred the property to Malibu Valley Farms, Inc. by an unrecorded grant deed.

Malibu Valley Farms, Inc. submitted a permit application on May 31, 2002. The application requested after-the-fact approval for the existing development, with the exception of twenty-eight 576 sq. ft. portable pipe corrals, a 288 sq. ft. storage shelter, 200 sq. ft. portable storage trailer, four 400 sq. ft. portable pipe corrals, 101 sq. ft. tack room with no porch, four 101 sq. ft. portable tack rooms with four-foot porches, 250 sq. ft. cross tie area, 360 sq. ft. cross tie shelter, two 2,025 sq. ft. covered corrals, and one 1,080 sq. ft. covered corral, all of which the applicant proposed to remove. The application also proposed construction of four 2,660 sq. ft. covered pipe barns, two 576 sq. ft. shelters, three 96 sq. ft. tack rooms, and a 2,400 sq. ft. hay/storage barn.

Although the application was submitted in 2002, it was not deemed complete until March 6, 2006, due in part to delays in securing approval-in-concept for the proposed project from the Los Angeles County Department of Regional Planning (DRP). A hearing on the application was scheduled for the May 2006 Commission meeting, but was postponed at the applicant's request. A hearing was subsequently scheduled for the August 2006 Commission meeting, with a staff recommendation of denial **(Exhibit 9)**. On July 27, 2006, the applicant submitted a letter withdrawing the permit application.

C. Development Claimed As Exempt From Coastal Act Requirements

Malibu Valley Farms contends that it has a vested right to conduct agricultural and livestock activities and to erect and maintain structures in connection with those activities at the property at 2200 Stokes Canyon Road, Calabasas. (Exhibit 5, Application for Claim of Vested Rights) and.

Malibu Valley Farms claims this vested right for all development shown on the large-scale map submitted with its application form. The map is attached as an exhibit in reduced form **(Exhibit 2)**. It identifies the following structures located in the coastal zone: equestrian riding arena (240'x105'); arena with wooden wall (150'x 300'); one story barn (24'x60'); proposed covered shelter (24'x24'x10'); two 45'x45' corrals with proposed roof to be added; storage container (8'x20'); back to back mare motel (2,600 square feet); cross tie area (10'x15'); nine 17'x10' parking stalls and one 17'x15' parking stall; four 20'x20' portable pipe corrals; equipment storage shelter (16'x18'); portable storage trailer (8'x25'); two 10'x15' cross tie areas; twenty-nine 24'x24' portable pipe corrals; tack room with no porch (101 sq. ft.); cross tie shelter (15'x24'); and four 101 sq. ft. tack rooms with porches. The map indicates that all of these structures are currently present at the site except the proposed 24'x24'x10' covered shelter and the roof of the two existing 45'x45' corrals.

Malibu Valley Farms contends that its agricultural and ranching activities at the site constitute development that was "vested" in the 1930s; therefore, they were vested prior to January 1, 1977, the effective date of the Coastal Act. The claimant asserts that no governmental authorization was necessary at the time that the agricultural and livestock activities on the site began. Additionally, Malibu Valley Farms asserts that the scope of its vested rights to conduct agricultural and livestock activities encompasses the right to replace structures, "modernize and update" the operations and to erect and maintain "any other structures incidental to the vested uses of the property." **(Exhibit 2).**

D. Evidence Presented by Claimant

In support of its application, Malibu Valley Farms has provided declarations concerning use of the property prior to enactment of the Coastal Act. The declarations are found in Exhibit B of the Application for Claim of Vested Rights. A summary of the declarations is set forth below.

Declaration of Warren Larry Cress – Mr. Cress executed a declaration stating that he lived near the property from 1967 to 1995 and that when the property was owned by the Claretian Missionaries, it was "used for agriculture, growing oat hay, and raising livestock" and that sheep were grazed and herded on the property by a man named Luigi. Mr. Cress also states that "[t]he Missionaries had horses on the property." He states that during a wildfire in 1969 or 1970, that people brought over 100 horses from all over the area to the property and they were kept in fenced areas that had been used for the sheep by Luigi. Other than fences for the sheep, the Cress declaration does not indicate that any other structures were located at the property.

Declaration of Luigi Viso – Mr. Viso executed a declaration stating that he raised sheep (approximately 2000 ewes and a large number of rams) on the property from 1969 through 1975. He suggests that there were holding pens and a stocking area on the flat area of the property. He also states that there was a horse barn nearby although he does not state whether it was on the property. Mr. Viso also states that there was a large fire in 1969 and people brought more than 100 horses to put in the corralled area that he used for his sheep.

Declaration of Virgil Cure – Mr. Cure executed a declaration stating that he worked as a farm hand on the property between 1947 and 1993. He asserts that the property was used for growing oat hay from 1947 until the late 1969s or early 1970s, that cattle were raised on the property from 1952 until 1978, and that sheep were raised on the property at some time prior to 1978. The Cure declaration does not indicate that horses were raised or boarded on the property or that any structures were located at the property during that time.

Declaration of Dominic Ferrante – Mr. Ferrante executed a declaration stating that he was general manager for the Claretian Missionaries from 1974 to 1988. (The 1988 date appears to be a typographical error because the property was transferred from the

Claretian Missionaries to the Boudreau family in 1978, as acknowledged in the declaration.) He states that the property was used for growing oat hay and grazing livestock, including cattle and sheep during this time. He also states that structures were placed at various locations and repeatedly removed during planting seasons and then replaced in the same or different location to accommodate the needs of the livestock. Mr. Ferrante does not state when the structures existed on the property. Ferrante states that he was involved in sale of the property to the Boudreau family in 1978 and subsequent to that time he visited the property about twice a year. The Ferrante declaration does not indicate that horses were boarded at the property.

E. Analysis of Claim of Vested Rights

1. There is No Evidence That Any of the Structures For Which a Vested Right is Sought Were Present on the Site as of January 1, 1977

The Commission has reviewed aerial photographs of the site taken in 1952 and January 24, 1977. These photographs do not show any of the structures for which Malibu Valley Farms claims a vested right. Malibu Valley Farms has not submitted any photographs that show the structures on the site as of January 1, 1977. The 1952 aerial photograph does appear to show some fences and similar structures on property that is located south of the Malibu Valley Farms property and that was owned by the Claretian Missionaries at that time.

Malibu Valley Farms provided declarations from four individuals as to what existed on the site prior to passage of the Coastal Act. The declaration from Mr. Warren Cress states that there were fences on the property. Mr. Cress does not state when the fences were present, whether they were present as of January 1, 1977, where they were located, what they were made of, or any other information that would support a finding that the fences present today are the same as the fences that Mr. Cress observed.

The declaration from Mr. Virgil Cure does not state that any structures were present on the site.

The declaration from Mr. Dominic Ferrante states that fences, corralling facilities and feeding facilities existed on the site, and that these were placed, removed, and replaced to coincide with the shifting locations of planting and grazing activities. There is no evidence that the fences currently existing on the site to support the equestrian facility are the same type and in the same location as the fences used for grazing of sheep and cattle. Nor is there an explanation as to why these structures do not appear on the 1977 aerial photographs. Therefore, this declaration does not demonstrate that the structures for which a vested right are sought are the same as those described by Mr. Ferrante.

The declaration from Mr. Luigi Viso describes holding pens, a stocking area and a barn. However, Mr. Viso's declaration is limited to a description of the property in 1975. There is no evidence that these structures remained on the site and were present when the Coastal Act was enacted.

In 1998, Brian Boudreau, President of Malibu Valley Farms, asserted that structures and improvements used for horse farming operations at the site were destroyed by a combination of wildfire in 1996 and heavy rains and flooding in 1997/1998. (Exhibit 2). Commission staff has observed the structures at the site and determined that they are made of newer materials and were constructed more recently than 1977. Whether the current structures were built following the destruction of prior existing structures by wildfire and floods does not affect the vested rights analysis. If structures existed at the time the Coastal Act was enacted and those structures were subsequently destroyed by wildfire or flood, new structures could potentially be built without coastal development permits pursuant to the disaster exemption at section 30610 (g) of the Coastal Act. (Use of this exemption requires that a replacement structure conform to existing zoning, be the same use as the destroyed structure, not exceed the floor area, height or bulk of the destroyed structure by more than 10 percent, and be in the same location as the destroyed structure.) Malibu Valley Farms has not submitted any evidence that demonstrates that any of the particular structures currently located at the site are replacements of structures that existed on the site on January 1, 1977, i.e. that they are in the same location, and of the same height and bulk as structures that existed on the site as of January 1, 1977.

Rather, the evidence suggests that Malibu Valley Farms built all of the structures and improvements associated with its equestrian facility after 1978. First, none of the declarations assert that Malibu Valley Farms began operations on the property prior to the time that the Claretian Missionaries transferred the property to the Boudreau family or that the Claretian Missionaries built structures that would be needed for a horse boarding, training and breeding operation. Instead, the declarations indicate that the Claretian Missionaries used the property for sheep and cattle grazing up until the time the property was sold, which was in 1978. Second, Malibu Valley Farms does not claim that it built particular structures before the property was acquired by the Boudreau family in 1978. Based upon the declarations that the Claretian Missionaries used the property for sheep and cattle grazing until sale to the Boudreau family in 1978, it seems that all of the structures for the horse boarding, training and breeding operation must have been constructed after acquisition of the property by Malibu Valley Farms in 1978.

2. There is No Evidence that Substantial Work Commenced or that Substantial Liabilities Were Incurred In Reliance on Government Approvals

As discussed above, there is no evidence that the existing structures and improvements on the site were present as of January 1, 1977. Furthermore, there is no evidence that

necessary permits for these structures and improvements had been obtained and substantial work commenced in reliance on such approvals prior to January 1, 1977. First, based on the aerial photographs, there is no evidence that construction of the improvements had commenced, e.g., there is no evidence of grading or partial construction of the equestrian related structures as of January 24, 1977. No other evidence has been provided to show commencement of construction, and instead, it appears that all construction commenced after Malibu Valley Farms took ownership of the property, which was in 1978. Second, if work had commenced to construct these structures and improvements, it was not based on government approvals given that required County approvals had not been obtained. At a minimum, the covered horse stalls (i.e., the mare motel) and the barn required building permits pursuant to County ordinances. The permit requirement for these structures is currently found at Los Angeles Code, Title 26, Sections 101–106. This ordinance was originally enacted in 1927 as Ordinance No. 1494 and has been in effect ever since then. Malibu Valley Farms has not provided evidence that it ever obtained a building permit for such structures prior to the Coastal Act.

There is additional development on the site that is not mentioned specifically by Malibu Valley Farms in its claim of vested rights, including irrigation structures, drainage structures discharging into Stokes Canyon Creek, as well as a dirt road and two at-grade crossings of Stokes Canyon Creek. Malibu Valley Farms has not submitted any evidence indicating that this development was undertaken prior to enactment of the Coastal Act or after enactment in reliance on governmental approvals. However, this development would be included under Malibu Valley Farms' claim that all development present at the site or occurring in the future is covered by vested rights, if it is "connected" to agricultural or livestock activities that are allegedly vested.

The Commission finds that Malibu Valley Farms has not establish a vested right to erect or maintain any of the development shown in its plans or any of the development that exists on the site that is not shown on the plans and that is not proposed to be removed. Malibu Valley Farms has not provided any evidence that it obtained permits and commenced construction in reliance on these permits prior to enactment of the Coastal Act. Therefore, it has not met its burden of establishing a vested right in this development.

3. Use of the Site for Sheep and Cattle Grazing and Growing Hay Does Not Give Rise to a Vested Right to Construct Numerous Structures to Support an Equestrian Facility

Malibu Valley Farms claims that because the site was used for sheep and cattle grazing along with agriculture prior to enactment of the Coastal Act, Malibu Valley Farms has an unlimited vested right to construct structures on the site without coastal permits, as long as those structures are connected to any type of agricultural or livestock activities on the site. As explained below, the Commission rejects Malibu Valley Farms' position.

The Coastal Act requires that a coastal development permit be obtained before new development is performed or undertaken [Coastal Act section 30600(a)]. The construction and/or placement of each of the structures on the site, including the barn, the covered shelter, the corrals, the mare motel, the parking stalls, and numerous other structures, is development as defined by the Coastal Act. Therefore, construction and placement of each of these structures required a coastal development permit. Section 30608 of the Coastal Act recognizes vested rights "in a development." A vested right is acquired if the development was completed prior to the Coastal Act pursuant to required government approvals or, at the time of enactment of the Coastal Act substantial work had commenced and substantial liabilities had been incurred in reliance on government approvals. Neither of these criteria has been met, as discussed above. If these criteria are not met, vested rights cannot be established for new development that is undertaken after the effective date of the Coastal Act. Because the evidence shows that all of the structures on the site were constructed after enactment of the Coastal Act, the construction and/or placement of these structures required a coastal development permit.

Vested rights claims are narrowly construed against the person making the claim. *(Urban Renewal Agency v. California Coastal Commission* (1975) 15 Cal.3d 577). Accordingly, vested rights to conduct an activity at the site are limited to specific identified activities that meet the requirements for establishing a vested right. Other related development undertaken at a later time to modify or update the manner in which the vested activity is conducted, or to facilitate the vested activity, is not vested or exempt from current permit requirements. *(See, Halaco Engineering Co. v. So. Central Coast Regional Commission* (1986) 42 Cal.3d 52, 76 (court acknowledged vested right to operate a foundry that had obtained necessary local approvals prior to the effective date of the Coastal Act, but denied a vested right for a propane storage tank that was installed later). In *Halaco*, the court found that the propane tank at issue was not part of what had been approved by the local government prior to enactment of the Coastal Act and therefore the tank constituted new development for which a permit was required, even though it was not disputed that the tank would contribute to the operation of the foundry. 42 Cal.3d at 76. Similarly, new development conducted by Malibu Valley Farms after January 1, 1977, is subject to the requirements of the Coastal Act.

Thus, even if the site was used for sheep and cattle grazing prior to the Coastal Act, there is no vested right to construct new structures to support that use or any other use. Furthermore, if a particular structure or use at the property is vested, by the very terms of the Coastal Act exemption (Section 30608), any substantial expansion of the structure or use also is "new development" and is not part of the vested right. Therefore, even if fences and feeding structures existed to support sheep and cattle grazing, substantial changes to such structures, such as placement of a new, different type of fence, would require a coastal development permit.

Even if Malibu Valley Farms had established a vested right to board a certain number of horses (which it has not), the scope of the vested right is limited to only what existed at the time of vesting. Any substantial change, such as a substantial increase in the

number of horses boarded at the site, or construction of new structures used for exercising, sheltering, or caring for the horses, are not vested and are subject to the requirements of the Coastal Act. Further, no evidence was submitted that establishes that horses were boarded, trained and bred at the site prior to enactment of the Coastal Act. The declarations provided by Malibu Valley Farms assert that after a wildfire in 1969, approximately 100 horses were brought to the site temporarily. (Exhibit 5, Application for Claim of Vested Rights, Exhibit B - Declarations of Warren Larry Cress and Luigi Viso). The evidence of a one-time temporary use of the site to keep horses after a wildfire does not establish vested right to continuously maintain that number of horses at the site. The use was merely a temporary, short-term use in response to a natural disaster. There is one declaration that states that the Claretian Missionaries "had horses on the property," but it does not state when or whether horses were boarded on the property. Therefore, this one statement is insufficient to establish that horses were boarded, trained and bred on the property prior to the Coastal Act. Even if there were evidence of use of the property for boarding horses prior to the Coastal Act, the erection of structures for purposes of boarding, training and breeding horses requires a coastal development permit if it occurs after January 1, 1977 unless the criteria for establishing a vested right have been met.

Malibu Valley Farms' claim of vested rights is so broad that it would cover any structure built on the site in the future as long as it is "connected" to agricultural or livestock activities that were allegedly vested prior to the Coastal Act. Under this theory, an unrestricted amount of development could occur at the site and neither the Coastal Act nor any local ordinances would ever apply, because the development would be within the scope of Malibu Valley Farms' vested rights. This theory is not supported by the Coastal Act and the case law on vested rights.

In summary, the Commission finds that Malibu Valley Farms has not provided evidence establishing that any of the existing structures at the site were constructed or were in the process of being constructed prior the effective date of the Coastal Act. The Commission finds that the construction of the existing structures at the site was new development that occurred after the effective date of the Coastal Act. The Commission also finds that the construction of the existing structures at the site, even if it was for the purpose of facilitating, updating, or modifying a prior use of the site, was a substantial change to any prior vested development and was not exempt from the requirements of the Coastal Act. Accordingly, the Commission finds that Malibu Valley Farms did not have a vested right to construct, and does not have a vested right to maintain, the existing structures at the site, without complying with the Coastal Act. Similarly, the Commission finds that Malibu Valley Farms does not have a vested right to build new structures at the site in the future, without complying with the Coastal Act.

4. The Site is Not Currently Used For Agriculture or Grazing Sheep and or Cattle and There Is No Vested Right to Resume Such Activities

Although Malibu Valley Farms claims that it is seeking a vested right to continue the agricultural and livestock activities that occurred on the site prior to enactment of the Coastal Act, it also states that it is seeking a vested right to maintain all of the existing development on the site. The evidence of prior agricultural and livestock use relates to use of the site for growing oat hay and raising and grazing sheep and cattle. All of the existing development is related to an equestrian facility, i.e., a facility for the boarding, training and breeding of horses. Thus, it does not appear that Malibu Valley Farms is seeking a vested right to carry out the actual agricultural and livestock activities that occurred on the site prior to enactment of the Coastal Act – oat hay farming and cattle and sheep raising and grazing. Commission staff inspected the site in November 1999. Commission staff had the opportunity to observe the entire site, and did not observe any use of the site for growing crops or grazing sheep or cattle. Commission staff again observed the site from Stokes Canyon Road and Mulholland Road in March 2000 and did not observe any use of the site for growing crops or grazing sheep or cattle. Commission staff returned to the site in August 2005 and again did not observe any use of the site for growing crops or raising goats, sheep, or cattle. Commission staff has, however, observed that areas of the site are irrigated pastures where horses are permitted to graze.

Malibu Valley Farms has not provided any documentation of expenditures for growing crops or grazing sheep or cattle at the site nor has it provided any documentation of income generated by the sale of crops, or from raising sheep, goats or cattle. Accordingly, Malibu Valley Farms has not provided evidence indicating that whatever growing of crops and/or raising of sheep, goats, or cattle occurred at the site prior to January 1, 1977, is a continuing activity at the site.

The evidence indicates that, at most, the Claretian Missionaries had a legal nonforming use of the site consisting of growing of crops and grazing sheep and cattle as of January 1, 1977. This nonconforming use was subsequently discontinued, abandoned and/or removed by Malibu Valley Farms when it constructed a horse boarding, training and breeding facility. The legal nonconforming use of the site does not give rise to a vested right to construct an equestrian facility and in any event was abandoned and cannot be resurrected by Malibu Valley Farms at this point. As is a common practice, Los Angeles County ordinances contain provisions for termination of the right to maintain a prior nonconforming use of property, if the use is abandoned or discontinued. (L.A. County Code, Title 22, Section 22.56.1540).

F. Conclusion

For all the reasons set forth above, the Commission finds that Malibu Valley Farms has not met the burden of proving its claim of vested rights for any of the development the currently exists at 2200 Stokes Valley Road.

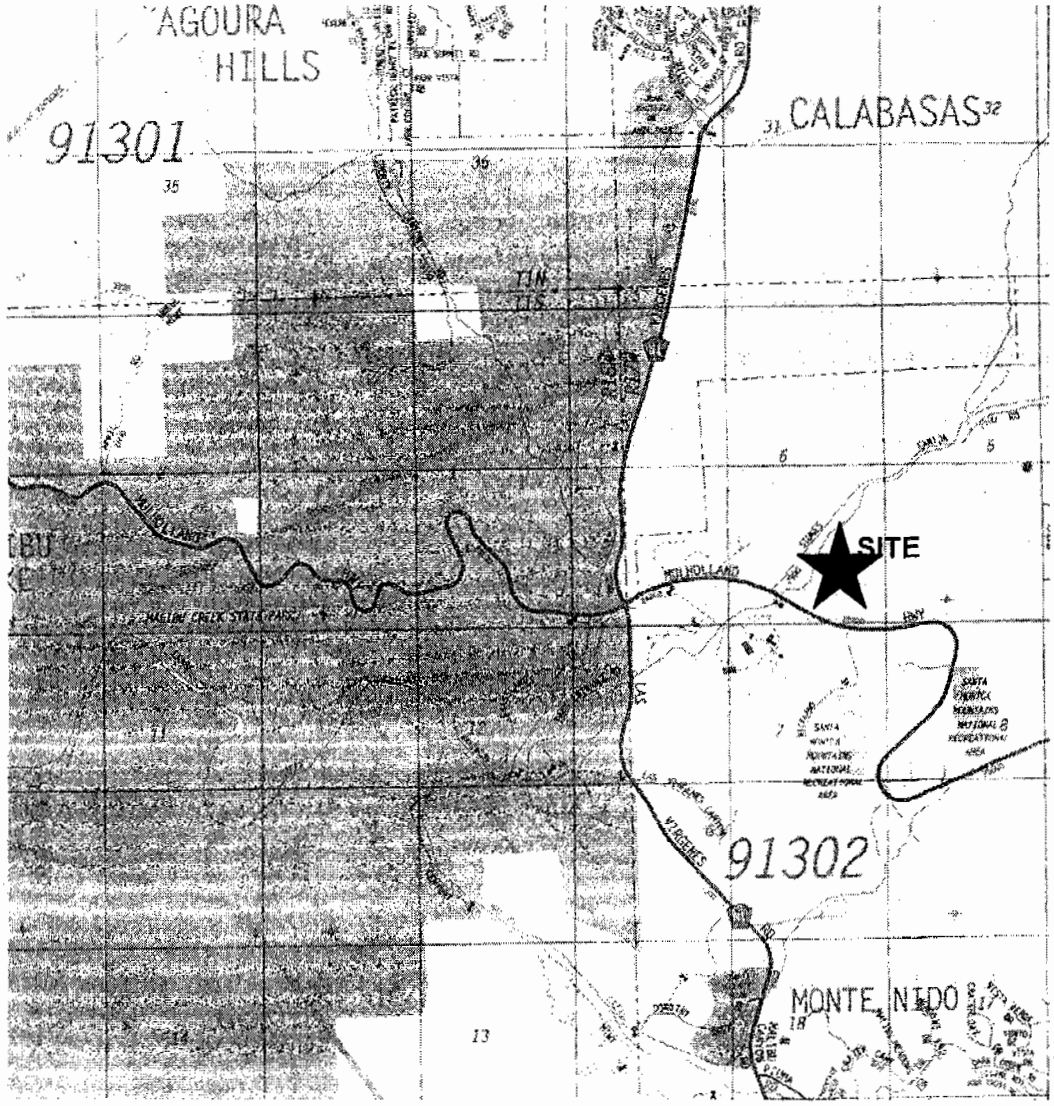


Exhibit 1
4-00-279-VRC
Vicinity Map

COX, CASTLE & NICHOLSON LLP
A Limited Liability Partnership Including Professional Corporations
LAWYERS
2049 Century Park East
Twenty-Eighth Floor
Los Angeles, California 90067-3284
Telephone (310) 277-4222
Facsimile (310) 277-7889
www.ccnlaw.com

Orange County Office

19800 MacArthur Boulevard
Suite 600
Irvine, California 92612-2435
(949) 476-2111 • (310) 284-2187
Facsimile (949) 476-0254

San Francisco Office

505 Montgomery Street
Suite 1550
San Francisco, California 94111-2585
Telephone (415) 296-9966
Facsimile (415) 397-1095

June 12, 2000

JUN 13 2000
CALIFORNIA
COASTAL COMMISSION

OUR FILE NO
32051
WRITER'S DIRECT DIAL NUMBER
(310) 284-2252
WRITER'S E-MAIL ADDRESS
sabraham@ccnlaw.com

VIA FACSIMILE & HAND-DELIVERY

Mr. Jack Ainsworth
Permits and Enforcement Supervisor
California Coastal Commission
89 South California Street, Suite 200
Ventura, CA 93001

Re: Coastal File No. V-4-00-001 / Request for Vested Rights Determination

Dear Mr. Ainsworth:

As we previously discussed on May 12, 2000, and agreed in subsequent communications, including our letter of May 25, 2000 and your response thereto, enclosed is the application of Malibu Valley, Inc. supporting its Claim of Vested Rights. Exhibits accompany the application that is hand-delivered with the original of this letter. A copy of the completed package is being delivered to the Coastal Commission's San Francisco Office and should be received tomorrow.

As we agreed, having submitted this application for a vested rights determination, you will have the enforcement proceeding that is currently on the Commission's June agenda taken off calendar. **Please confirm that the proceeding is dropped from the calendar.**

We understand that your office may ask for additional information and we will attempt to respond to these requests in a timely manner.

Exhibit 2
4-00-279-VRC
Claim of Vested Rights Application

Thank you again for your assistance and cooperation in this matter. We look forward to working with you.

Sincerely,

Stephen E. Abraham

SEA
SEABRAHA/32051/844267v1
Enclosures (Faxed w/out Exhibits)
Cc: California Coastal Commission, North Coast Area

STATE OF CALIFORNIA—THE RESOURCES AGENCY PETE WILSON, Governor

CALIFORNIA COASTAL COMMISSION
NORTH COAST AREA
45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
(415) 904-5260

CLAIM OF VESTED RIGHTS

NOTE: Documentation of the information requested, such as permits, receipts, building department inspection reports, and photographs, must be attached.

1. Name of claimant, address, telephone number:

   Malibu Valley, Inc., 26885 Mulholland Highway

   Calabasas, California 91302 (818) 880-5139
   (zip code) (area code) (telephone number)

2. Name, address and telephone number of claimant's representative, if any:

   Stanley W. Lamport, Esq.; Stephen E. Abraham, Esq. Cox, Castle & Nicholson LLP

   2049 Century Park East, 28th Floor, Los Angeles, CA 90067 (310) 277-4222
   (zip code) (area code) (telephone number)

3. Describe the development claimed to be exempt and its location. Include all incidental improvements such as utilities, road, etc. Attach a site plan, development plan, grading plan, and construction or architectural plans.

   Agriculture and livestock activities on the property located at 2200 Stokes Canyon Road. Malibu Valley is seeking a vesting determination with respect to both the nature and intensity of use on the property in question.

4. California Environmental Quality Act/Project Status. Not Applicable.

   Check one of the following:

   a. Categorically exempt _____. Class: _____. Item: _____.

      Describe exempted status and date granted: _____.

   b. Date Negative Declaration Status Granted: _____.

   c. Date Environmental Impact Report Approved: _____.

      Attach environmental impact report or negative declaration.

FOR COASTAL COMMISSION USE:

Application Number _____ Date Submitted _____
Date Filed _____

J1: 2/89

5. List all governmental approvals which have been obtained (including those from federal agencies) and list the date of each final approval. Attach copies of all approvals.

Permits for certain improvements are included in this application at Tab A. Remaining facilities and grading on the site pre-dated the Coastal Act and did not otherwise require permits at the time the work occurred.

6. List any governmental approvals which have not yet been obtained and anticipated dates of approval.

None.

7. List any conditions to which the approvals are subject and date on which the conditions were satisfied or are expected to be satisfied.

None.

8. Specify, on additional pages, nature and extent of work in progress or completed, including (a) date of each portion commenced (e.g., grading, foundation work, structural work, etc.); (b) governmental approval pursuant to which portion was commenced; (c) portions completed and date on which completed; (d) status of each portion on date of claim; (f) amounts of money expended on portions of work completed or in progress (itemize dates and amounts of expenditures; do not include expenses incurred in securing any necessary governmental approvals). See continuation page 4 following this application.

9. Describe those portions of development remaining to be constructed.

None.

-3-

10. List the amount and nature of any liabilities incurred that are not covered above and dates incurred. List any remaining liabilities to be incurred and dates when these are anticipated to be incurred.

Malibu Valley is a multi-million dollar ranching business that continues to operate a farm -- including growing of crops and raising of livestock -- that has existed continuously on the Property for over 70 years.

11. State the expected total cost of the development, excluding expenses incurred in securing any necessary governmental expenses.

12. Is the development planned as a series of phases or segments? If so, explain.

No.

13. When is it anticipated that the total development would be completed?

Work is completed.

14. Authorization of Agent.

I hereby authorize Cox, Castle & Nicholson LLP to act as my ~~representative and bind me~~ attorneys in all matters concerning this application.

Signature of Chairmant

15. I hereby certify that to the best of my knowledge the information in this application and all attached exhibits is full, complete, and correct, and I understand that any misstatement or omission of the requested information or of any information subsequently requested, shall be grounds for denying the exemption or suspending or revoking any exemption allowed on the basis of these or subsequent representations, or for the seeking of such other and further relief as may seem proper to the Commission.

Signature of Chairmant(s) or Agent

CLAIM OF VESTED RIGHTS

Application of Malibu Valley
June 9, 2000
page 4

Question 8:

Specify, on additional pages, nature and extent of work in progress or completed, including (a) date of each portion commenced (e.g., grading, foundation work, structural work, etc.); (b) governmental approval pursuant to which portion was commenced; (c) portions completed and date on which completed; (d) status of each portion on January 1, 1977; (e) status of each portion on date of claim; (f) amounts of money expended on portions of work completed or in progress (itemize dates and amounts of expenditures; do not include expenses incurred in securing any necessary approvals).

Malibu Valley operates an ongoing farming enterprise. Malibu Valley is engaging in agricultural and ranching activities that have been conducted on the land for more than 70 years. Declarations regarding the nature and intensity of use of the land are included in this application at Tab B. Maps and other graphic representations of the land are included at Tab C. Other documents demonstrating the extent to which the land was used for farming operations are included at Tab D.

DECLARATION OF WARREN LARRY CRESS

I, Warren Larry Cress, declare as follows:

1. I first moved into the Stokes Canyon area in 1967 when I purchased the house at 2607 Stokes Canyon Road. I lived in that house for 28 years, until 1995.

2. My house was close to the property owned by the Claretian Missions that is now operated by Malibu Valley. That property was used for agriculture, growing oat hay and raising livestock. The Missionaries had horses on the property. Also, a man named Luigi grazed and herded his sheep on the Property.

3. Between two and three times a year, I bought oat hay from the Claretian Missionaries.

4. Sometime in 1969 and 1970, there was a large fire in the valley. A number of houses were burned as was my tac room. I remember that during that fire, people came from all over the community with their horses. More than 100 horses were kept on the Property in fenced areas that had been used by Luigi for his sheep.

5. The facts set forth in this declaration are personally known to me and I have first hand knowledge of the same. If called as a witness, I could and would competently testify to the facts set forth in this declaration.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on June 9, 2000, at Bradley, California.

Warren Larry Cress

DECLARATION OF VIRGIL CURE

I, Virgil Cure, declare as follows:

1. Between 1947 and 1993, I worked as a farm hand on the property currently operated by Malibu Valley Farms, Inc. When I started working on the property in 1947, Clarence Brown owned the farm. It encompassed both sides of what is today Stokes Canyon Road from Mulholland Highway northward.

2. In 1947, Stokes Canyon Road did not exist. The road was created in the 1950s. Mulholland Highway was a dirt road. In 1947 Stokes Canyon Creek ran along the west side of the canyon along the base of the hillside, in approximately the location of the Malibu Valley Farm stables. The course of the creek was altered in the 1950s when Stokes Canyon Road was constructed. The current location of the creek on the Malibu Valley Farm property is a ditch that was created using a backhoe.

3. In 1947, all of the property on the east side of Stokes Canyon Road, including the largely flat area along Mulholland Highway, was used to grow oat hay. Most of the natural vegetation was removed and the ground was disked annually in order to grow the oat hay. Disking and seeding would occur in December. We would cut and bale the last cutting of the oat hay in June.

4. After Stokes Canyon Road went in and the creek bed was altered in the 1950s, we continued to raise oat hay on the east side of the road. The farming of oat hay included the area along Stokes Canyon Road and Mulholland Highway currently depicted on maps as being located in the Coastal Zone. The farming of oat hay in this area continued until the late 1960s or early 1970s. Prior to 1978, we also raised sheep on the east side of Stokes Canyon Road. For at least part of the year, the sheep would graze on the land located along Stokes Canyon Road and Mulholland Highway,

including the area depicted on maps as located in the Coastal Zone. The sheep were watered in Stokes Creek.

5. The Claretian Missionaries bought the portion of the farm located on the west side of Stokes Canyon Road in 1952. The land they acquired includes the land presently owned by Malibu Valley Farms, Inc. From approximately 1952 until they sold the land in 1978, the Claretians raised cattle on the property, including on that portion of the property shown on maps to be located in the Coastal Zone.

6. The Boudreau family purchased the land on both sides of Stokes Canyon Road in 1978. I continued to work on the property as a ranch hand until I retired in 1993.

7. All of the land currently used by Malibu Valley Farms, Inc. on the east side of Stokes Canyon Road and along Mulholland Highway has been continuously used for farming throughout the time I worked on the property. None of that property is in a native, undisturbed condition. It has not been in such a condition at any time since I began working on the property in 1947.

8. The facts set forth in this declaration are personally known to me and I have first hand knowledge of the same. If called as a witness, I could and would competently testify to the facts set forth in this declaration.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on June __, 2000, at Calabasas, California.

Virgil Cure

Virgil Cure

DECLARATION OF DOMINIC FERRANTE

I, Dominic Ferrante, declare as follows:

1. From early-1974 to 1988, I served as General Manager for the Claretian Missionaries who owned property located on the east side of Las Virgenes and the north side of Mulholland Highway ("Property") that is own owned or operated by Malibu Valley Farms, Inc. ("MVFI").

2. As General Manager, I was responsible for running all of the business operations of the Claretians' not-for-profit corporation, including real estate, securities, investments, administration, and operations. I was responsible for managing all activities on the Property, including those relating to the agricultural uses of the land.

3. During the entire time that I was General Manager, the Property was dedicated to the growing of oat hay and grazing of livestock, including cattle and sheep. These activities were ongoing throughout the Property. Oat hay was planted during the growing seasons, after which cattle and then sheep would graze throughout the crop areas. This was a continuous cycle of farming.

4. Almost all of the Property was used for the farming operations. The area between Las Virgenes Road to the west and Mulholland Highway to the south, and on both sides of Stokes Canyon Road was an area of significant use because of its naturally flat terrain, sparse vegetation, and close proximity to improved roads.

5. Structures would be located and constructed at various places on the Property to support the livestock operations, including fences, corralling facilities, and feeding facilities. Those structures would be moved to make way during the planting seasons but would then be returned, either to the same location or to another location in response to shifting and particular needs of the livestock. Agricultural activities on the land were constant and continuous.

6. While I was General Manager, there was no period of time when this cycle of crops and livestock was discontinued. The planting of crops, re-introduction of livestock, and replanting was part of a continuous agricultural management cycle.

7. In 1978, I was involved in the sale of the Property to the Boudreau family, owners of MVFL. After the Property was sold, I visited the Property approximately twice a year. I last visited the Property in May of 2000. I have had the opportunity to observe the farming activities during my visits.

8. The farm operates in much the same manner today as it did when I was the General Manager. The same areas are used to raise and maintain livestock. The farm today has the same types of livestock facilities as when I managed the Property.

9. The facts set forth in this declaration are personally known to me and I have first hand knowledge of the same. If called as a witness, I could and would competently testify to the facts set forth in this declaration.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on June 9, 2000, at Huntington Park, California.

Dominic Ferranto

DECLARATION OF LUIGI VISO

I, Luigi Viso, declare as follows:

1. Between 1969 and 1975, I raised sheep on the property now run by Malibu Valley Farms, Inc. Each year, I would sign a contract to use the land for my sheep herding business. I would raise the sheep and sell their wool to buyers from San Francisco.

2. I had about 2000 ewes. I also had a large number of rams. Each of the ewes had lambs each season.

3. In 1969, there was a large fire. People brought their horses from all over the area to put in the corralled area that I used for my sheep. There were more than 100 horses. I lost two hundred sheep in the fire.

4. In 1983 or 1984, I allowed my sheep to be used to save the community from the risks of fire in the area during a dry period. The television stations covered this. The news stories are on the video tape entitled, "sheep."

5. The property included hilly areas and a naturally flat area just north of Mulholland and east of Stokes Canyon Road. It was always flat as long as I had used it and had very little vegetation. It was mostly the remains after oat hay was cut and bailed.

6. Each day, I turned the sheep out over the hills on the property. The sheep would graze in the areas where crops had been growing. They were watered in the creek running through the property. Each evening, the sheep would return to the flat area of the property. This was the best place to keep the sheep at night. Because the land was naturally flatter than the surrounding hilly areas, it was easier to control the sheep and protect them from coyotes.

7. I also used this flat area to hold and shear the sheep. It was a perfect location for my holding pens and a stocking area. There was a horse barn nearby.

8. The facts set forth in this declaration are personally known to me and I have first hand knowledge of the same. If called as a witness, I could and would competently testify to the facts set forth in this declaration.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on June 9, 2000, at Calabasas, California.

Luigi Viso

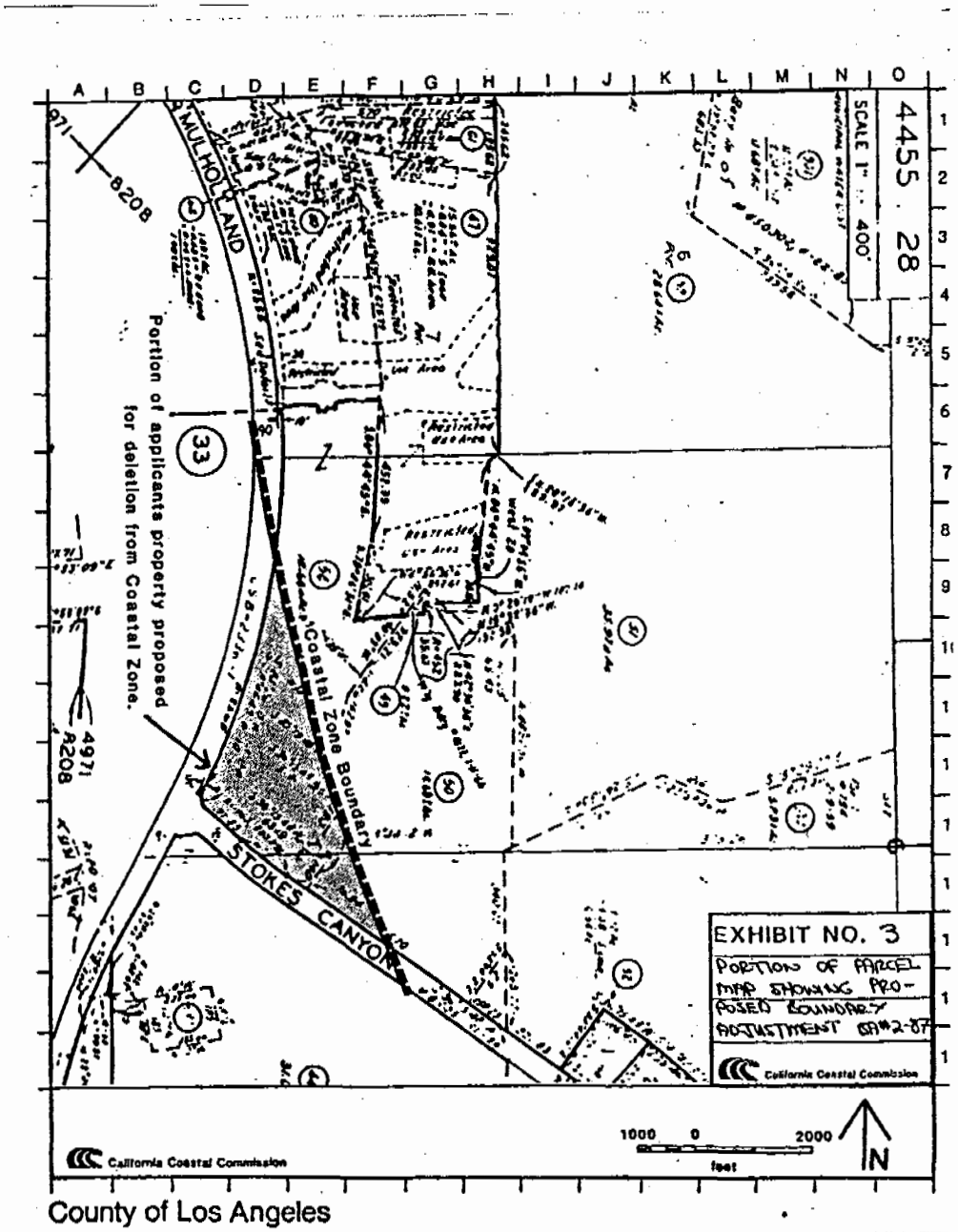
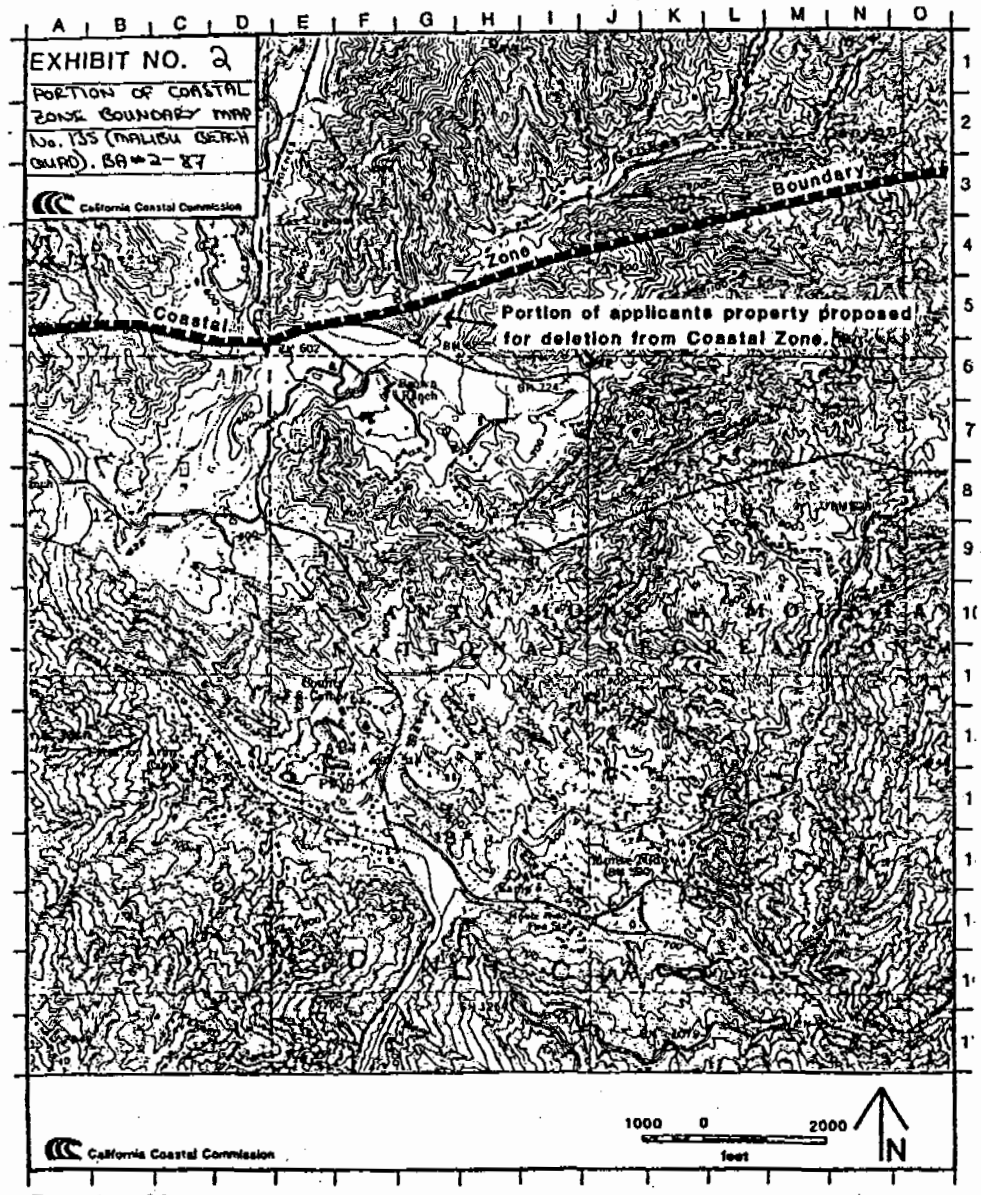


Exhibit 1
4-00-279-VRC
Vicinity Map



County of Los Angeles

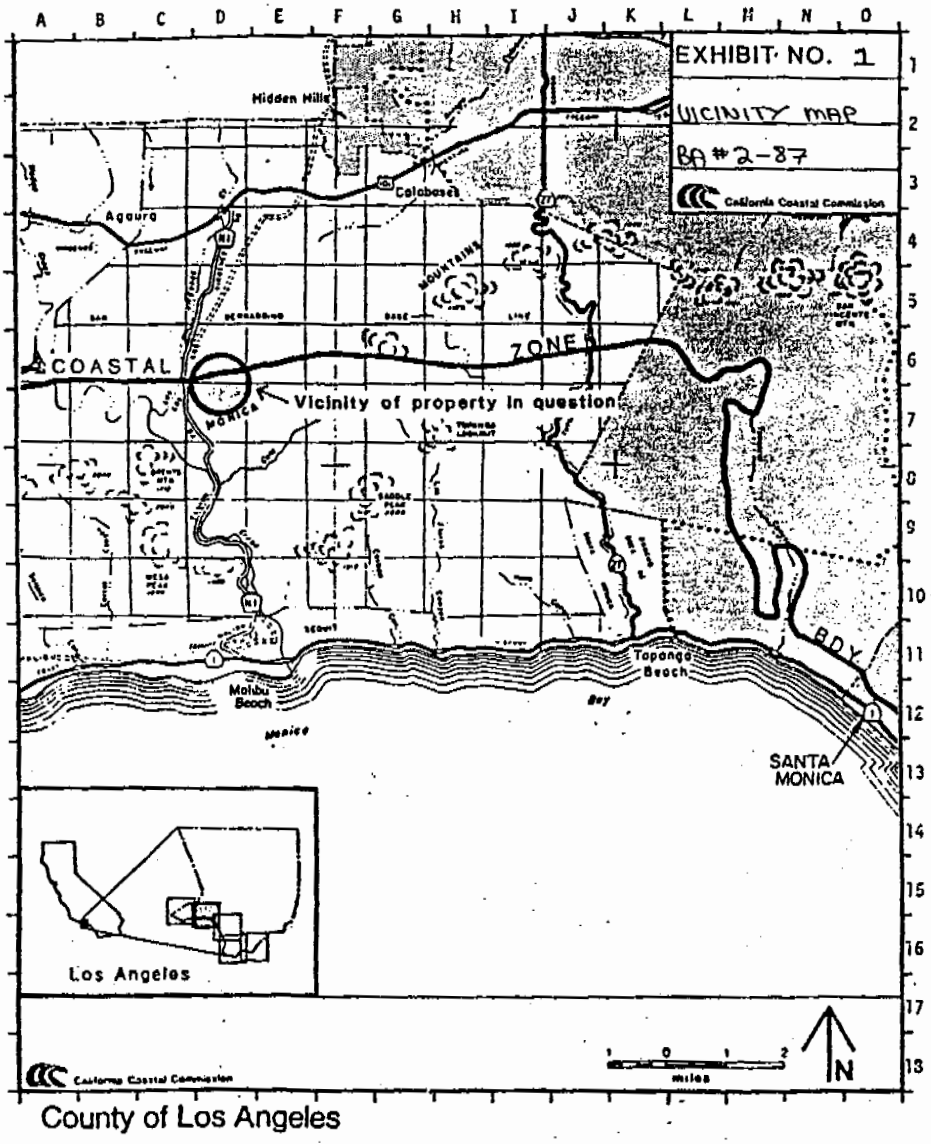
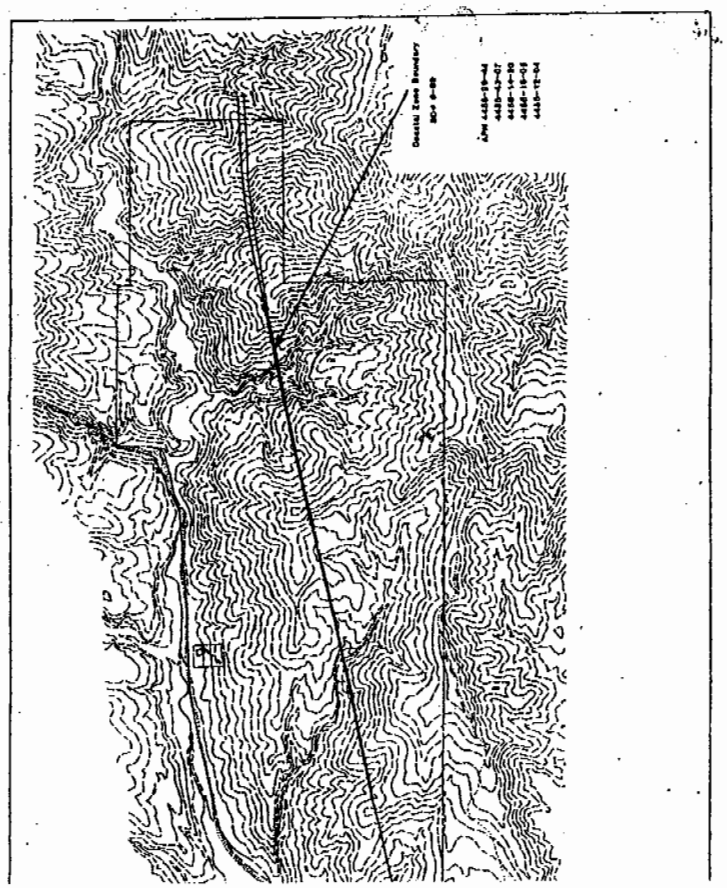
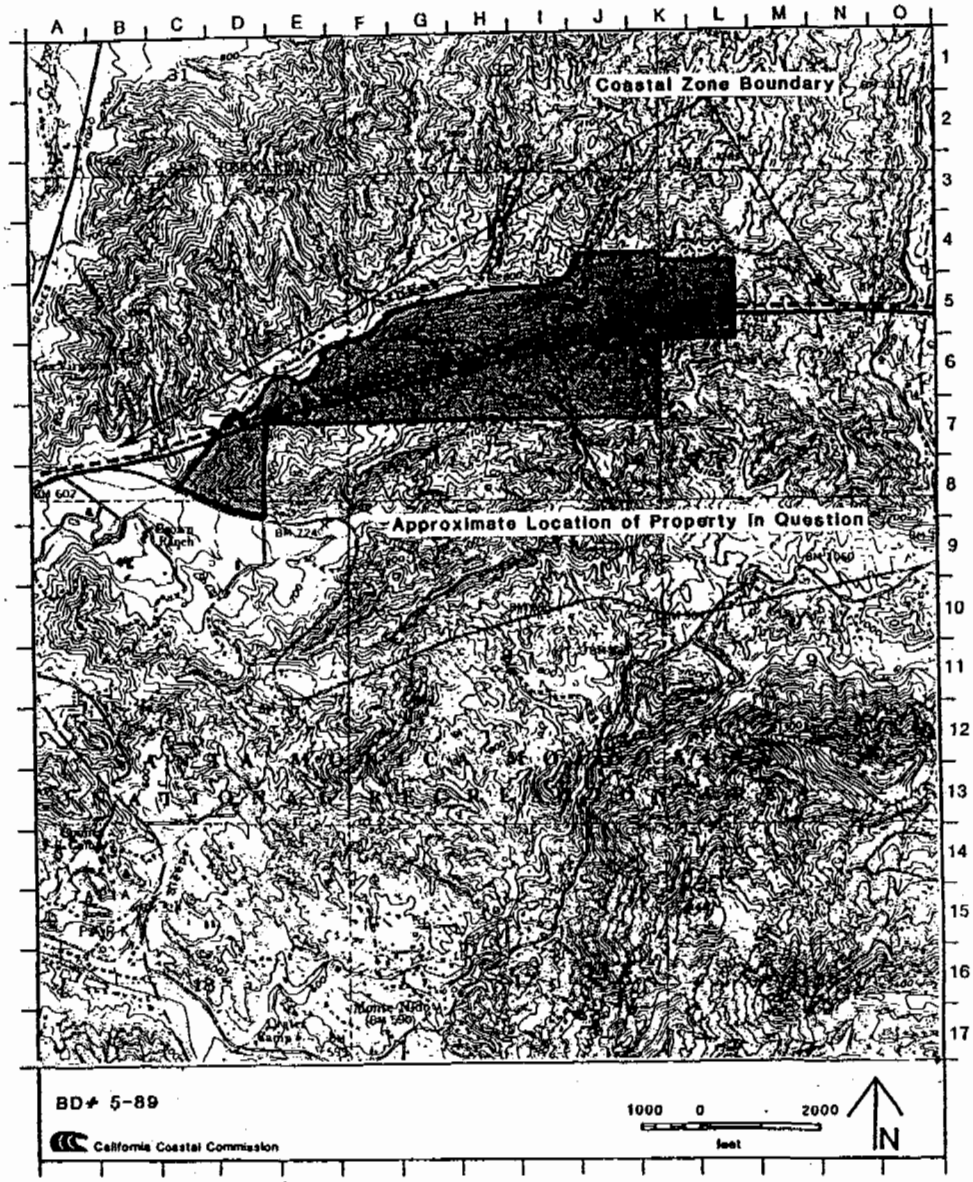


EXHIBIT NO. 1
VICINITY MAP
RA #2-87
California Coastal Commission
Hidden Hills
Calabasas
Agoura
COASTAL ZONE
Vicinity of property in question
Malibu Beach
Topanga Beach
SANTA MONICA
Los Angeles
miles
N
County of Los Angeles



[redacted]



County of Los Angeles

STATE OF CALIFORNIA—THE RESOURCES AGENCY GEORGE DEUKMEJIAN, Governor

CALIFORNIA COASTAL COMMISSION
631 HOWARD STREET, 4TH FLOOR
SAN FRANCISCO, CA 94105
(415) 543-8555
Hearing Impaired/TDD (415) 896-1825

February 21, 1989

Mr. Frank King
Vice President / Planning
Malibu Valley Farms
2200 Strokes Canyon Road
Calabasas, CA 91302

Re: Boundary Determination #5-89

Dear Mr. King,

Enclosed is a copy of Coastal Zone Boundary Map No. 135 (Malibu Beach Quad), with the approximate location of Los Angeles County APN's 4455-28-44, 4455-43-07, 4455-14-20, 4455-15-05, 4455-12-04 shown thereon. Also included is a copy of the large scale site plan map you provided with the Coastal Zone Boundary added.

As I mentioned in our phone conservation last week, the Coastal Zone Boundary you submitted was accurately plotted on the western half of the proposed site. On the eastern half of the site, however, the Coastal Zone Boundary was plotted slightly seaward (south) of the actual Coastal Zone Boundary. The property is bisected by the Coastal Zone Boundary, with approximately 110 acres located in the Coastal Zone. This section of the property would be subject to the requirements of the Coastal Act of 1976.

Please contact me should you have any questions regarding this determination.

Sincerely,

Jonathan Van Coops

JONATHAN VAN COOPS
Mapping Program Manager

JVC:ns

cc: C. Damm, CCC-LA

Enclosures

2242N

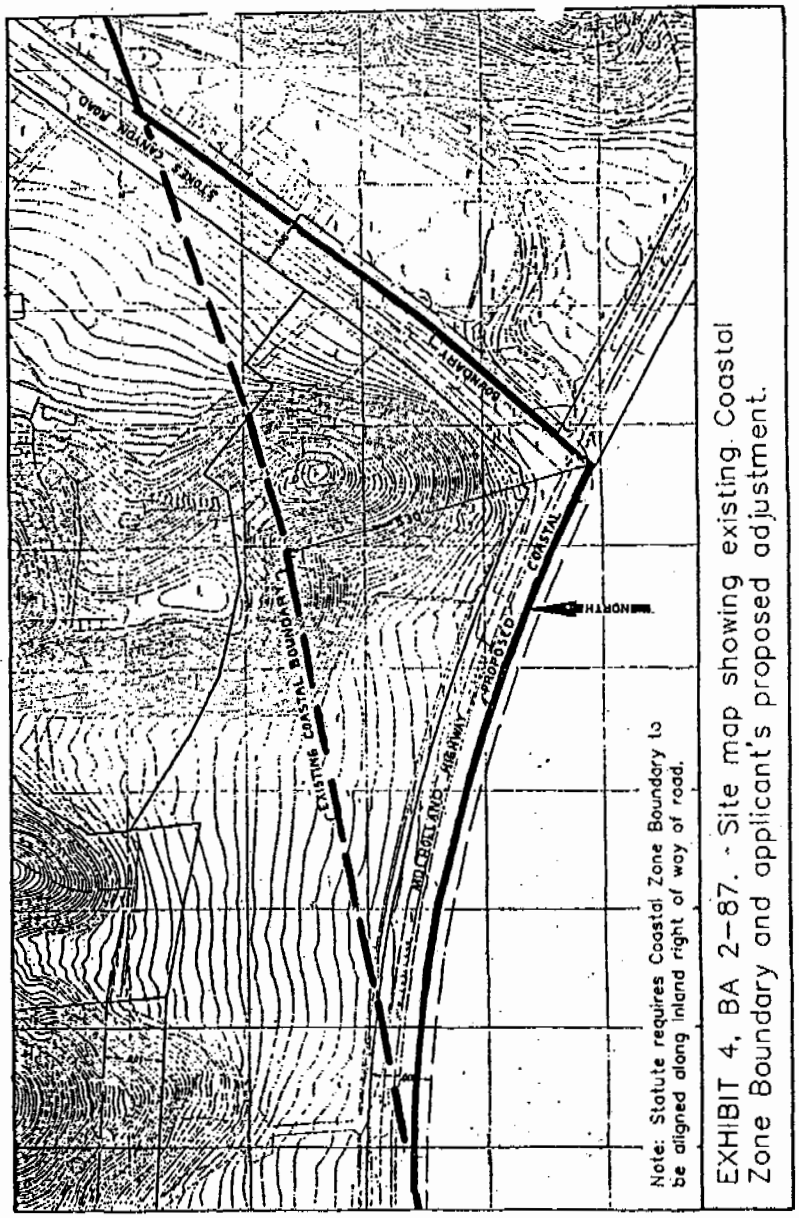
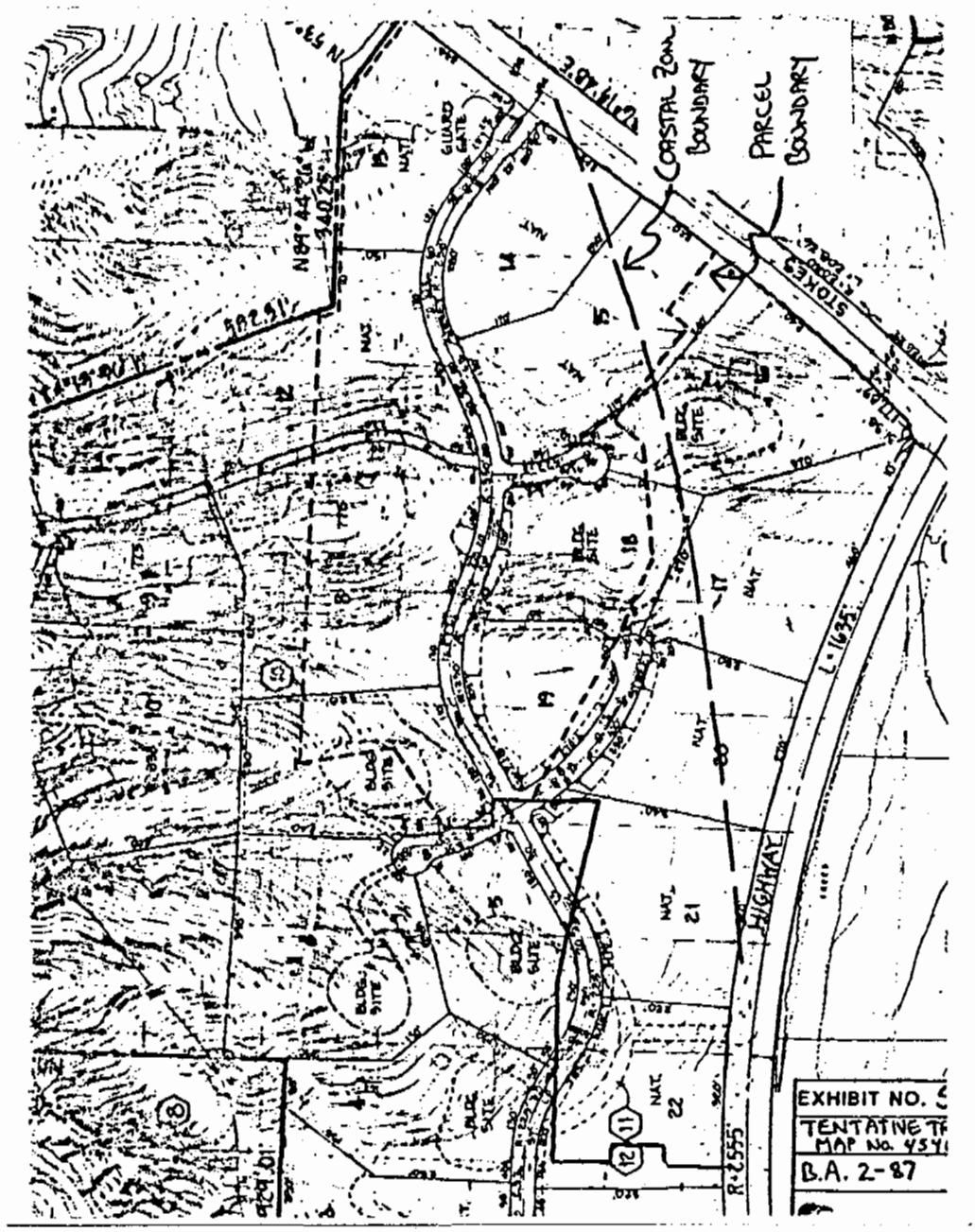


EXHIBIT 4, BA 2-87. - Site map showing existing Coastal Zone Boundary and applicant's proposed adjustment.


COASTAL ZONE BOUNDARY
PARCEL BOUNDARY
STOKES
HIGHWAY
GUARD GATE
BLDG SITE
EXHIBIT NO.
TENTATIVE TR
MAP No. 454
B.A. 2-87

/08/99 11:49 FAX 002

Robert K. Levin

Sorrel River Ranch
P.O. Box K
Moab, Utah 84532
(435) 259-4642

January 6, 1999

Building and Safety
L.A. County Department of Public Works
5661 Las Virgenes Road
Calabasas, California 91302

Re: Construction of Pipe Barn Located on the Northeast Intersection of Stokes Canyon Road and Mulholland Highway

To Whom It May Concern:

I, Robert K. Levin, owner of the real property located on the northeast intersection of Stokes Canyon Road and Mulholland Highway, County of Los Angeles (APN No. 4455-028-044), give Brian Boudreau, President of Malibu Valley Farms, Inc., full authority to sign on my behalf on any and all permits or other documents necessary to facilitate the replacement of the pipe barn burned by the 1996 wild fire.

DATED: 1-6-99

By: Robert K. Levin
Robert K. Levin

By: Brian Boudreau
Brian Boudreau, President
Malibu Valley Farms, Inc.

2005-027 &
MVF02179.doc

01/06/99 11:51 TX/RX NO.2346 P.002

ACKNOWLEDGMENTS

State of Utah)
County of Grand) SS.

On 1-6, 1999, before me, Jennie Ross, Notary Public, personally appeared Robert K. Levin, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature Jennie Ross

(Seal)

JENNIE ROSS
NOTARY PUBLIC
[illegible] 84532
MY COMMISSION EXPIRES
SEPT 15, 2000
STATE OF UTAH

State of California)
) SS.
County of Los Angeles)

On 1/8, 1999, before me, Norma Vergara, Notary Public, personally appeared Brian Boudreau, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature Norma Vergara

(Seal)

NORMA VERGARA
Commission # 1173369
Notary Public - California
Los Angeles County
My Comm. Expires Mar 5, 2002

LOS ANGELES COUNTY DEPARTMENT OF PUBLIC WORKS
DEVELOPMENT AND PERMITS TRACKING SYSTEM

ATE: 12/18/98 DPR4051
IME: 09:12:53 PAGE 1
OUTE TO: BS0910 REQUESTED BY: XXXXXXX

FEE RECEIPT

RECEIPT NUMBER: BS09100012620

HIS IS A RECEIPT FOR THE AMOUNT OF FEES COLLECTED AS LISTED BELOW. THE RECEIPT UMBER, DATE AND AMOUNT VALIDATED HEREON HAS ALSO BEEN VALIDATED ON YOUR PPLICATION OR OTHER DOCUMENT AND HAS BECOME A PART OF THE RECORD OF THE COUNTY F LOS ANGELES, FROM WHICH THIS RECEIPT MAY BE IDENTIFIED. PLEASE RETAIN THIS ECEIPT AS PROOF OF PAYMENT. ANY REQUEST FOR REFUND MUST REFERENCE THIS RECEIPT UMBER.

ATE PAYMENT RECEIVED: 12/18/98 09:12:03
PROJ/APPL/IMPRV NBR: BL 9812170013
PROPERTY ADDRESS: 2200 STOKES RD N CLBS
RELATED PROJECT:
PAYOR NAME: DIAMOND WEST ENGINEERING, INC.
ADDRESS: 26885 MULHOLLAND HWY

CALABASAS CA 91302
PHONE: (818) 878-0300 EXTN:

ORK DESCRIPTION: BARN-2464 SQ FT

FEE ITEM	FEE DESCRIPTION	STATISTICAL CODE	CALCULATION FACTOR	UNIT OF MEASURE	EXTENDED AMOUNT
AA	BLDG PERMIT ISSUANCE	A018303			$18.90
AE	STRONG MOTION OTHER	A018303	34780.00	VALUATN	$7.30
D1	PLANCHECK W/O EN-HC	A019224	34780.00	VALUATN	$347.99
D2	PERMIT W/O EN-HC	A018303	34780.00	VALUATN	$409.40

TOTAL FEES PAID: $783.59

AYMENT TYPE	REFERENCE	AMT TENDERED	CHANGE GIVEN	AMOUNT APPLIED
HECK	005175	$783.59	$0.00	$783.59

OFFICE: BS 0910 DRAWER: SH
ASHIER: SH

ITEMS WITH AN ASTERISK (*) WILL REQUIRE FURTHER DEPOSITS
WHENEVER ACTUAL COSTS EXCEED THE DEPOSIT AMOUNT
********** END OF REPORT **********

LOS ANGELES COUNTY DEPARTMENT OF PUBLIC WORKS
DEVELOPMENT AND PERMITS TRACKING SYSTEM

)ATE: 12/17/98 DPR4051
CIME: 08:27:43 PAGE 1
ROUTE TO: BS0910 REQUESTED BY: XXXXXXX

MISCELLANEOUS FEE RECEIPT

RECEIPT NUMBER: BS09100012616

'HIS IS A RECEIPT FOR THE AMOUNT OF FEES COLLECTED AS LISTED BELOW. THE RECEIPT IUMBER, DATE AND AMOUNT VALIDATED HEREON HAS ALSO BEEN VALIDATED ON YOUR APPLICATION OR OTHER DOCUMENT AND HAS BECOME A PART OF THE RECORD OF THE COUNTY)F LOS ANGELES, FROM WHICH THIS RECEIPT MAY BE IDENTIFIED. PLEASE RETAIN THIS :ECEIPT AS PROOF OF PAYMENT. ANY REQUEST FOR REFUND MUST REFERENCE THIS RECEIPT IUMBER.

PAYMENT ACCEPTED FOR: 2200 STOKS CANYON

)ATE PAYMENT RECEIVED: 12/17/98 08:27:28
PAYOR NAME: DIAMOND WEST ENGINEERING
ADDRESS: 26885 MULHOLLAND HWY CALABASAS CA 91302
PHONE: (818) 878-0300

FEE TEM	FEE DESCRIPTION	STATISTICAL CODE	CALCULATION FACTOR	UNIT OF MEASURE	EXTENDED AMOUNT
06	INSPECTIONS O.T.	A018303	1.00	HOURS	$66.90
18	ADDITIONAL REVIEW	A019236	2.00	HOURS	$149.00

TOTAL FEES PAID: $215.90

'AYMENT TYPE	REFERENCE	AMT TENDERED	CHANGE GIVEN	AMOUNT APPLIED
HECK	005167	$215.90	$0.00	$215.90

OFFICE: BS 0910 DRAWER: 03
ASHIER: LA

ITEMS WITH AN ASTERISK (*) WILL REQUIRE FURTHER DEPOSITS
WHENEVER ACTUAL COSTS EXCEED THE DEPOSIT AMOUNT
********** END OF REPORT **********

```
D A P T S                MISCELLANEOUS FEE ACCEPTANCE                12/15/98
FEEPMS                                                               08:44:14
REVIEW CALCULATIONS - PRESS PF6 TO CONFIRM
PREVIOUS TRANSACTION SUCCESSFULLY COMPLETED                          PAGE    1
                                                    ORG/LOC: BS 0910
                                                    BAL DUE:      215.90
                                                              * CALCULATION *
JOB                                CALCULATION   UNIT    CALCULATED *   OVERRIDE  *
NUMBER    FEE ITEM TEXT              FACTOR       MEAS.     AMOUNT   CODE NEW AMOUNT
          INSPECTION  OTHER            1.00 HOURS           66.90 __ _____________
          ADDITIONAL REVIEW            2.00 HOURS          149.00 __ _____________
DPC405                  NEXT TRANSACTION: _______                            PF1=HELP
```

STATE OF CALIFORNIA--THE RESOURCES AGENCY GRAY DAVIS, GOVERNOR

CALIFORNIA COASTAL COMMISSION
45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200
FAX (415) 904-5400

April 19, 2000

Jan Perez, Statewide Enforcement Program
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

SUBJECT: **Boundary Determination No. 18-2000**
APN 4455-028-044, Los Angeles County

Dear Ms. Perez:

Enclosed is a copy of a portion of the adopted Coastal Zone Boundary Map No. 135 (Malibu Beach Quadrangle) with the approximate location of Los Angeles County APN 4455-028-044 indicated. Also included is an assessor parcel map exhibit that includes the subject property, to which the coastal zone boundary has been added.

Based on the information provided and that available in our office, the APN 4455-028-044 appears to be bisected by the coastal zone boundary in the manner indicated on Exhibit 2. Any development activity proposed within the coastal zone would require coastal development permit authorization from the Coastal Commission.

Please contact me at (415) 904-5335 if you have any questions regarding this determination.

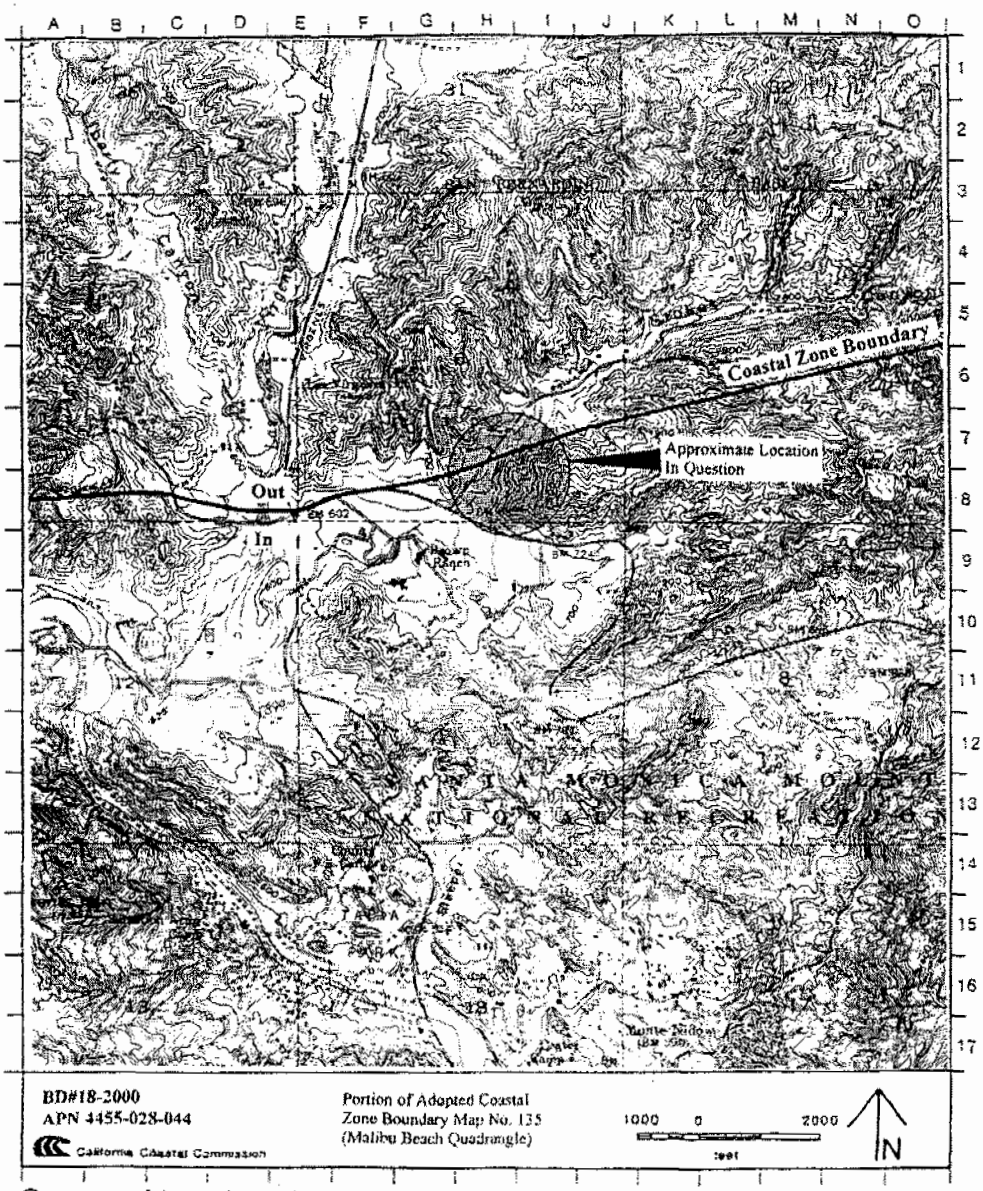
Sincerely,

Darryl Rance
Mapping/GIS Unit

Enclosures

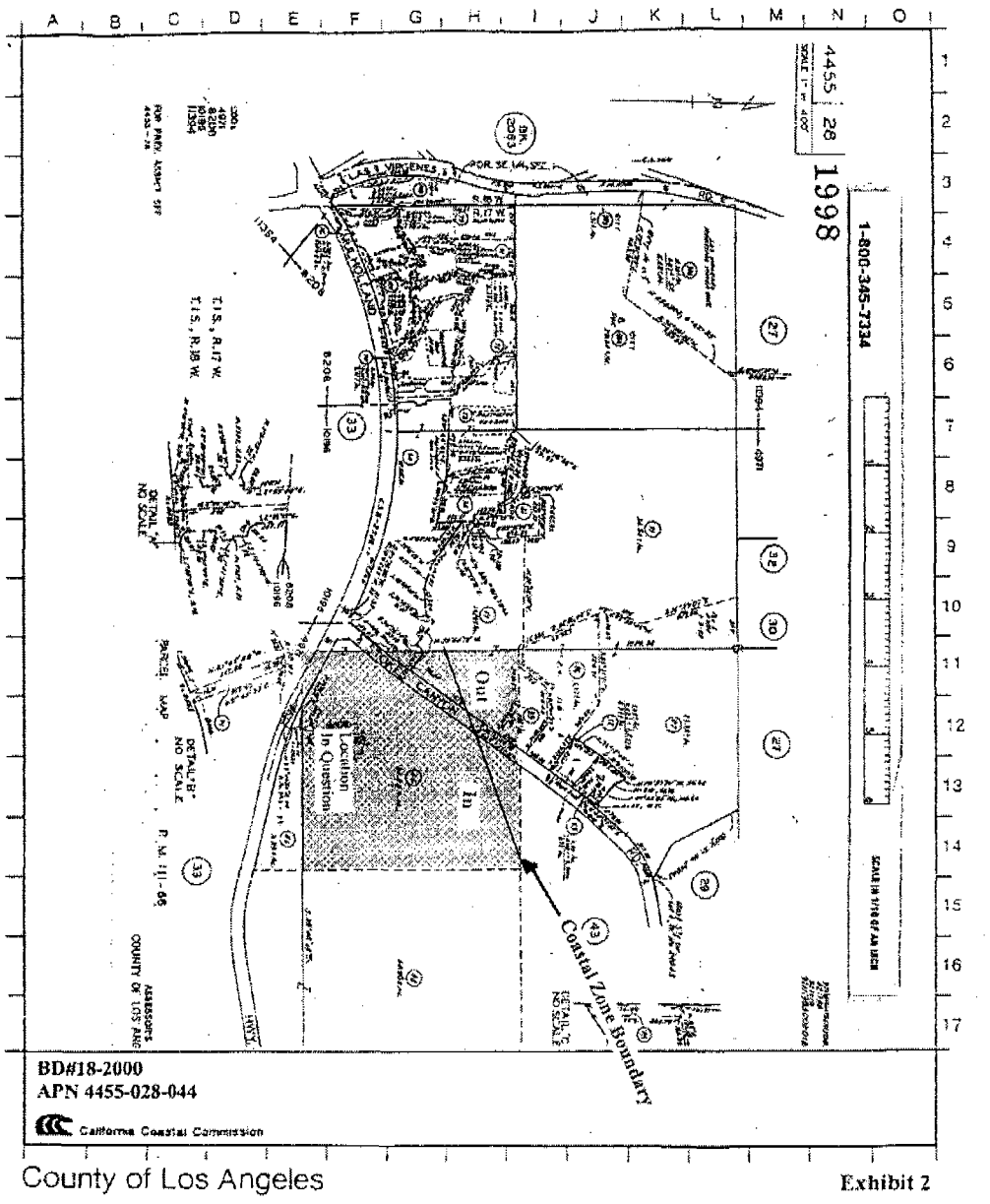
cc: Jack Ainsworth, CCC-SCC

Exhibit 3
4-00-279-VRC
Boundary Determination No. 18-2000



County of Los Angeles

Exhibit 1



County of Los Angeles

Exhibit 2

4-98-125-4

MALIBU VALLEY FARMS, INC.

November 19, 1998

RECEIVED
NOV 20 1998
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

VIA FEDERAL EXPRESS

Mr. Jack Ainsworth
California Coastal Commission
South Central Coast Area
89 South California Street, Suite 200
Ventura, California 93001

Re: **Malibu Valley Farms, Inc.**
Replacement of Horse Farming Structures Destroyed by Disaster

Dear Mr. Ainsworth:

This letter is a follow-up to my telephone conversation on November 18, 1998, with Sue Brooker regarding the replacement by Malibu Valley Farms, Inc. of pipe corrals and other structures that were damaged or destroyed by disaster.

Malibu Valley Farms operates a horse farm on land east of Stokes Canyon Road and north of Mulholland Highway in the unincorporated area of Los Angeles County. For your convenience, I have enclosed with this letter a site plan showing the location of the land on which Malibu Valley Farms intends to replace the destroyed structures. This area is within the Coastal Zone. In connection with its horse farming activities, Malibu Valley Farms installed and erected several large covered pipe corrals, a separate storage room for tack, and a large covered bin used to protect stall shavings from the elements. These improvements were erected prior to the passage of the Coastal Act and were located just north of Mulholland Highway.

In 1996, the pipe corrals and the related improvements were destroyed by the intense fires that swept through the Santa Monica Mountains. Copies of several newspaper photographs showing the effects of the fires on the land used by Malibu Valley Farms for its horse farming operation are enclosed. What little that remained of the improvements was destroyed this past winter by the severe flooding that caused severe erosion due to unusually heavy rains.

2200 STOKES CANYON ROAD ◆ CALABASAS 91302
TELEPHONE (818) 880-5139 ◆ FACSIMILE (818) 880-5414 ◆ E-MAIL MVFI@IX.NETCOM.COM

Exhibit 4
4-00-279-VRC
Exemption Request Letter, Nov. 19, 1998

Mr. Jack Ainsworth
California Coastal Commission
November 19, 1998
Page 2

Malibu Valley Farms is now in the process of replacing the structures destroyed by the disasters with a new covered pipe barn structure. A copy of the structural elevations for the replacement structures is enclosed. The structural plans and the location of the replacement structure have been approved by the County. Although the replacement structure meets County setback requirements and is permitted under the A-1-10 zoning, because it will be erected on land within the Coastal Zone, the County has requested that we furnish a Coastal Commission exemption letter.

The new structure is replacing the covered pipe corrals, storage barn, tack room, and other improvements that were destroyed by the fires and floods. The new pipe barn is sited in the same location on the affected property as the improvements that were destroyed and does not exceed the floor area, height, or bulk of the destroyed structures by more than 10 percent. To meet the new County setback requirements, we intend to replace the destroyed structures with pipe corrals connected by a contiguous roof and thereby concentrate the improvements in a smaller area. The replacement of the destroyed structures does not involve any expansion of the horse farming activities which have been conducted on the land for the past 23 years.

As we have discussed, Malibu Valley Farms would like to complete this work as soon as possible in order to prepare for the impending winter rains. Therefore, I ask that you forward a letter confirming that no coastal development permit is needed for this work to my office at your earliest convenience. If you require any additional information, please do not hesitate to call.

Thank you for your assistance and courtesy.

Sincerely,

Brian Boudreau, President
Malibu Valley Farms, Inc.

Enclosures
MVF2164.doc
2005-019/012

STATE OF CALIFORNIA—THE RESOURCES AGENCY PETE WILSON, Governor

CALIFORNIA COASTAL COMMISSION
SOUTH CENTRAL COAST AREA
89 SOUTH CALIFORNIA ST., SUITE 200
VENTURA, CA 93001
(805) 641-0142

EXEMPTION LETTER

4-98-125-X

DATE: December 7, 1998

NAME: **Brian Boudreau**

LOCATION: **2200 Stokes Canyon Road, Calabasas, Los Angeles County**

PROJECT: **Replace 14 pipe corrals (totaling 2,500 sq. ft.) burned by 1996 wild fire (to replace previous corrals totaling approximately 3,500 sq. ft.) in same location, to be similarly used for commercial horse boarding on pre-existing horse farm.**

This is to certify that this location and/or proposed project has been reviewed by the staff of the Coastal Commission. A coastal development permit is not necessary for the reasons checked below.

___ The site is not located within the coastal zone as established by the California Coastal Act of 1976, as amended.

___ The proposed development is included in Categorical Exclusion No.____ adopted by the California Coastal Commission.

___ The proposed development is judged to be repair or maintenance activity not resulting in an addition to or enlargement or expansion of the object of such activities (Section 30610(d) of Coastal Act).

___ The proposed development is an improvement to an existing single family residence (Section 30610(a) of the Coastal Act) and not located in the area between the sea and the first public road or within 300 feet of the inland extent of any beach (whichever is greater) (Section 13250(b)(4) of 14 Cal. Admin. Code.

___ The proposed development is an improvement to an existing single family residence and is located in the area between the sea and the first public road or within 300 feet of the inland extent of any beach (whichever is greater) but is not a) an increase of 10% or more of internal floor area, b) an increase in height over 10%, or c) a significant non-attached structure (Sections 30610(a) of Coastal Act and Section 13250(b)(4) of Administrative Regulations).

___ The proposed development is an interior modification to an existing use with no change in the density or intensity of use (Section 30106 of Coastal Act).

(OVER)

Exhibit 5
4-00-279-VRC
Exemption Letter 4-98-125-X

Page 2

__ The proposed development involves the installation, testing and placement in service of a necessary utility connection between an existing service facility and development approved in accordance with coastal development permit requirements, pursuant to Coastal Act Section 30610(f).

__ The proposed development is an improvement to a structure other than a single family residence or public works facility and is not subject to a permit requirement (Section 13253 of Administrative Regulations).

XX The proposed development is the rebuilding of a structure, other than a public works facility, destroyed by a disaster. The replacement conforms to all of the requirements of Coastal Act Section 30610(g).

__ Other:

Please be advised that only the project described above is exempt from the permit requirements of the Coastal Act. Any change in the project may cause it to lose its exempt status. This certification is based on information provided by the recipient of this letter. If, at a later date, this information is found to be incorrect or incomplete, this letter will become invalid, and any development occurring at that time must cease until a coastal development permit is obtained.

Truly yours,

Melanie Hale

Melanie Hale
Coastal Program Analyst

Dec. 15 '98 9:29 0000 STOKES PARTNERS 818-880-6370 P. 1

TO: Sue Brooks

Los Angeles County
Department of Regional Plan
Director of Planning James E. Hartl

September 29, 1998

NOTICE OF VIOLATION

Malibu Valley Farms, Inc.
2200 N. Stokes Canyon Road
Calabasas, CA 91302

Inspection File No. EF89865

Dear Sir/Madam:

It has been reported that you are boarding horses, maintaining inoperable vehicles and junk and salvage at the above address. In addition, there are numerous trailers occupied as dwelling units on the same address.

These are not permitted uses in the A-1-1 zone classification and are in violation of the provisions of the Los Angeles County Zoning Ordinance, Sections 22.24.030, 22.24.070, 22.24.035(B) and 22.24.100.

Please consider this an order to comply with the provisions of the Zoning Ordinance within ten (10) days after receipt of this letter.

Per Section Code 22.24.100, any property in the A-1 zone may be used for riding academies and stables with the boarding of horses, on a lot or parcel of land having as a condition of use, an area of not less than 5 acres, by filing for a Conditional Use Permit (CUP), you may keep or maintain horses as pets or for personal use only, provided that your property or parcel meets a minimum required area of 15,000 square feet, not to exceed one horse per 5,000 square feet. If you do not meet the minimum required area, you may be eligible for an "Animal Permit" for horses exceeding the number permitted, or on lots having less than the required area. Also, all buildings or structures used in conjunction therewith shall be located not less than 50' from any street, highway, or any building used for human habitation and corrals shall be 35' distance.

Failure to comply as requested will cause this matter to be referred to the District Attorney with the request that a criminal complaint be filed. Conviction can result in a penalty of up to six months in jail and/or a one thousand dollar fine, each day in violation constituting a separate offense.

Any inquiry regarding this matter may be addressed to the Department of Regional Planning, 320 W. Temple Street, Los Angeles, CA 90012; Attention: Zoning Enforcement, telephone (213) 974-6483. To speak directly with the investigator, Carmen Sainz, please call before 10:00 a.m., Monday through Thursday. Our offices are closed on Fridays.

Very truly yours,

Reported VIO.

DEPARTMENT OF REGIONAL PLANNING
James E. Hartl, AICP
Director of Planning

Morris J. Litwack, Acting Section Head
Zoning Enforcement

320 West Temple Street • Los Angeles, CA 90012 • 213 974-6411 Fax: 213 626-0434 • TDD: 213 617-2292

OCT 06 1998

Exhibit 6
4-00-279-VRC
9/28/1998 Letter from Los Angeles County

STATE OF CALIFORNIA - THE RESOURCES AGENCY GRAY DAVIS, Governor

CALIFORNIA COASTAL COMMISSION
SOUTH CENTRAL COAST AREA
89 SOUTH CALIFORNIA ST., SUITE 200
VENTURA, CA 93001
(805) 641 - 0142

CERTIFIED & REGULAR MAIL

January 22, 1999

Brian Boudreau
Malibu Valley Farms, Inc.
2200 Stokes Canyon Road
Calabasas, CA 91302

Re: Coastal Development Exemption Request 4-98-125-X

Location: 2200 Stokes Canyon Road, Calabasas, Los Angeles County

Dear Mr. Boudreau:

On December 7, 1998, Commission staff issued coastal development permit exemption 4-98-125-X for 14 pipe horse corrals (totaling 2,500 sq. ft.) to replace the previous corrals totaling 3,500 sq. ft. burned by the 1996 wild fire. Upon further investigation,staff has determined that the horse corrals and additional existing development, including a horse riding area, horse pastures, and a barn, that has been constructed after the implementation of the Coastal Act, January 1, 1977, without the benefit of the required coastal development permit. This exemption was issued in error an unfortunately must be revoked. This letter confirms this conclusion which was communicated to you on January 14, 1998.

Please be advised that Section 30600(a) of the Coastal Act states that in addition to obtaining any other permit required by law, any person wishing to perform or undertake any development in the coastal zone must obtain a coastal development permit. "Development" is broadly defined by Section 30106 of the Coastal Act to include:

> ***"Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of the use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvest of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations....***

The horse corrals, riding facilities, and a barn that were constructed on your property between 1977 and 1986 constitute "development" as defined in Section 30106 of the

Exhibit 7
4-00-279-VRC
Revocation of Exemption 4-98-125-X

Coastal Act and, therefore, a coastal development permit was required from the Commission prior to construction.

Because this development was unpermitted, the exemption for reconstruction of structures destroyed by natural disasters under Section 30610(g)(1) of the Coastal Act is inapplicable. Therefore, coastal development permit exemption 4-98-125-X (Malibu Valley Farms) is revoked on the basis that the unpermitted development destroyed in the fire does not qualify for an exemption pursuant to Section 30610 (g)(1) of the Coastal Act. Construction of the horse corrals will require a coastal development permit.

In addition, the following unpermitted development remains on site: a horse riding area, a polo field, two horse corrals, a barn, numerous horse corrals, and accessory buildings.

Please note that any development activity performed without a coastal development permit constitutes a violation of the California Coastal Act's permitting requirements. Resolution this matter can occur through the issuance of an after-the-fact permit for the remaining unpermitted development, restoration of the site or a combination of the two actions. Please know that our office would prefer to resolve this matter administratively through the issuance of an after-the-fact coastal development permit to either retain the development or restore the site.

Enclosed is a coastal development permit application for your convenience. Please include all existing and purposed construction on your property that lies within the Coastal Zone within your coastal development permit application. Please submit a completed coastal development permit application to our office by February 26, 1999. If you have any further questions, please do not hesitate to contact me at (805) 641-0142.

Your anticipated cooperation is appreciated.

Sincerely,

Sue Brooker
Coastal Program Analyst

Encl.: CDP apptication

Cc: Mark Pestrella; LA County Dept of Building and Safety

Smb: h:\letters\1999\malibu valley farms.doc

Feb-15-01 11:55am From-COX, CASTLE & NICHOLSON 310-277-7889 T-479 P.002/003 F-931

COX, CASTLE & NICHOLSON LLP
A Limited Liability Partnership Including Professional Corporations
LAWYERS
2049 Century Park East
Twenty-Eighth Floor
Los Angeles, California 90067-3284
Telephone (310) 277-4222
Facsimile (310) 277-7889
www.ccnlaw.com

Orange County Office

San Francisco Office

OUR FILE NO:
32051
WRITER'S DIRECT DIAL NUMBER
(310) 284-2275
WRITER'S E-MAIL ADDRESS
stamport@ccnlaw.com

February 15, 2001

VIA FACSIMILE

Sandra Goldberg, Esq.
California Coastal Commission
San Luis Opisbo, CA

Re: Coastal File No. V-4-00-001 / Request for Vested Rights Determination

Dear Ms. Goldberg:

This letter confirms that Malibu Valley Farms, Inc. and Robert K. Levin are requesting a continuance of the hearing before the Coastal Commission on the vested rights determination referenced above. The applicants have determined that they are not prepared to respond to the staff recommendations at the meeting today for which a vote on the application is scheduled. We first learned about the staff's recommendation when we received a copy of the staff report approximately two weeks ago. I have had to be out of town for most of the time since the report was sent to us. There are number of issues raised in the staff report for which the applicants believe there is important additional information that needs to be before the Commission in order for the applicants to receive a fair hearing on their application. Some of that information is in the possession of third parties who have not been available in the short time we have had to respond. While we been diligently working to assemble the additional declarations and documentation we believe will respond to the recommendations in the staff report, there just has not been enough time to complete that task.

This request is on behalf of all of the applicants, including Malibu Valley, Inc., to the extent it is still recognized as an applicant. Mr. Donald Schmitz is authorized to convey this request to the Commission on behalf of the applicants.

Exhibit 8
4-00-279-VRC
2/15/2001 Letter from Applicant's Representatives

We very much appreciate the Commission's favorable consideration of this request.

Sincerely,

Stanley W. Lamport

SWL:rsl
32051/862921v1

STATE OF CALIFORNIA – THE RESOURCES AGENCY ARNOLD SCHWARZENEGGER, Governor

CALIFORNIA COASTAL COMMISSION
SOUTH CENTRAL COAST AREA
89 SOUTH CALIFORNIA ST., SUITE 200
VENTURA, CA 93001
(805) 585 - 1800

Filed:	3/06/06
49th Day:	4/24/06
180th Day:	12/01/06
Staff:	LF-V
Staff Report:	7/20/06
Hearing Date:	8/09/06
Commission Action:	

W 8a

STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.: 4-02-131

APPLICANT: Malibu Valley Farms, Inc.

AGENT: Stanley Lamport and Beth Palmer

PROJECT LOCATION: Northeast corner of Mulholland Highway and Stokes Canyon Road, Santa Monica Mountains (Los Angeles County)

APN NO.: 4455-028-044

PROJECT DESCRIPTION: Request for after-the-fact approval for an equestrian facility, including a 45,000 sq. ft. arena with five-foot high surrounding wooden wall with posts, 200 sq. ft. portable rollaway bin/container, 200 sq. ft. portable tack room with four-foot porch (to be relocated approximately 20 feet west), 576 sq. ft. pipe corral, 576 sq. ft. covered shelter, 25,200 sq. ft. riding arena, approximately 2,000 sq. ft. parking area, 2,660 sq. ft. back to back mare motel, 150 sq. ft. cross tie area, 1,440 sq. ft. one-story barn, 160 sq. ft. storage container, three-foot railroad tie walls, approximately 20,000 sq. ft. fenced paddock, fencing, dirt access road with at-grade crossing through Stokes Creek, and a second at-grade dirt crossing of Stokes Creek. The proposed project also includes removal of twenty-eight 576 sq. ft. portable pipe corrals, a 288 sq. ft. storage shelter, 200 sq. ft. portable storage trailer, four 400 sq. ft. portable pipe corrals, 101 sq. ft. tack room with no porch, four 101 sq. ft. portable tack rooms with four-foot porches, 250 sq. ft. cross tie area, 360 sq. ft. cross tie shelter, two 2,025 sq. ft. covered corrals, and one 1,080 sq. ft. covered corral. The proposed project also includes construction of four 2,660 sq. ft. covered pipe barns, two 576 sq. ft. shelters, three 96 sq. ft. tack rooms, and a 2,400 sq. ft. hay/storage barn.

Lot Area	31.02 acres
Lot Area within Coastal Zone (CZ)	~28 acres
Proposed development area (in CZ)	~6 acres

Exhibit 9
4-00-279-VRC
Staff Report for CDP No. 4-02-131 with selected exhibits

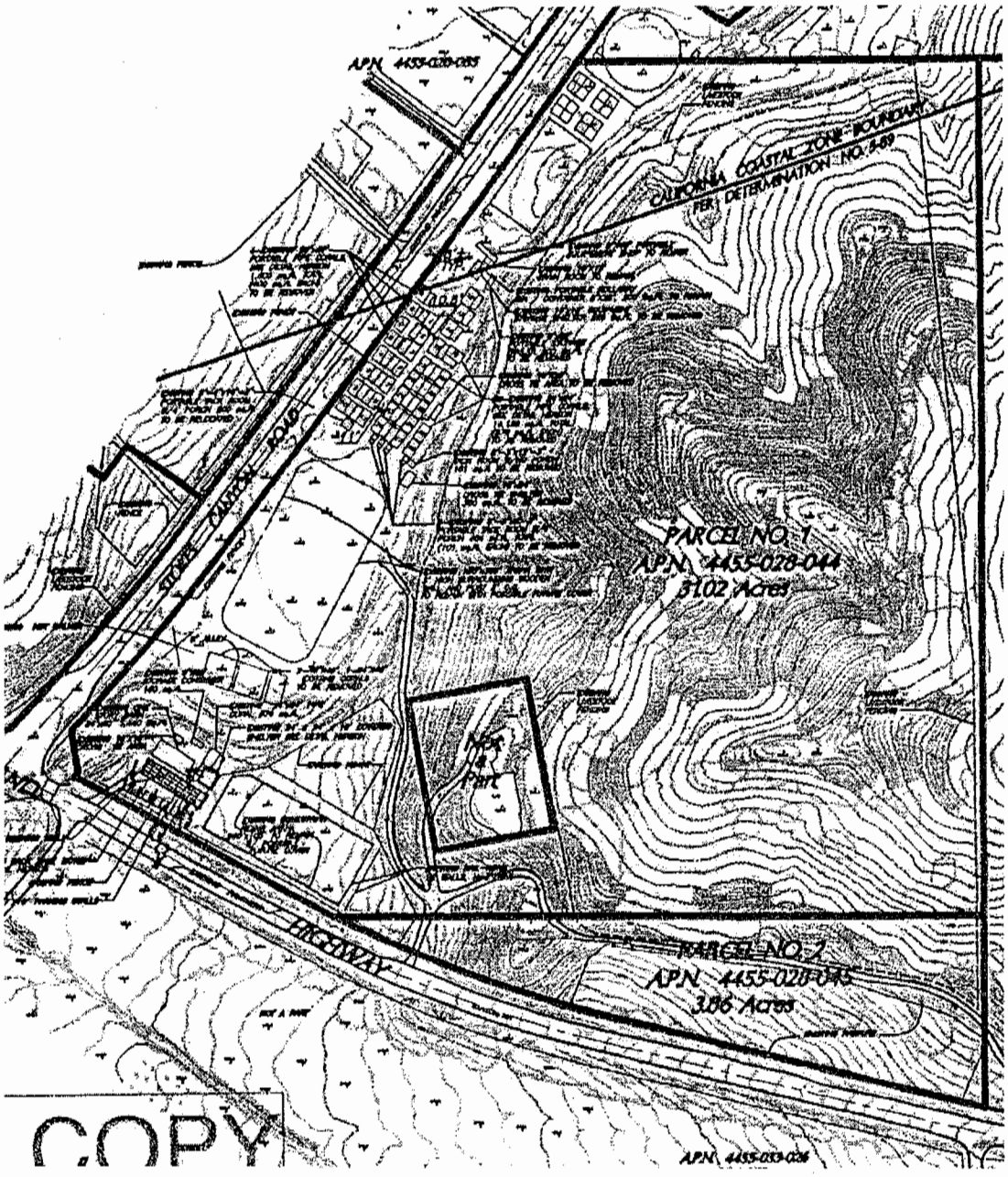


Exhibit 5
CDPA No. 4-02-131
Site Plan (Existing)

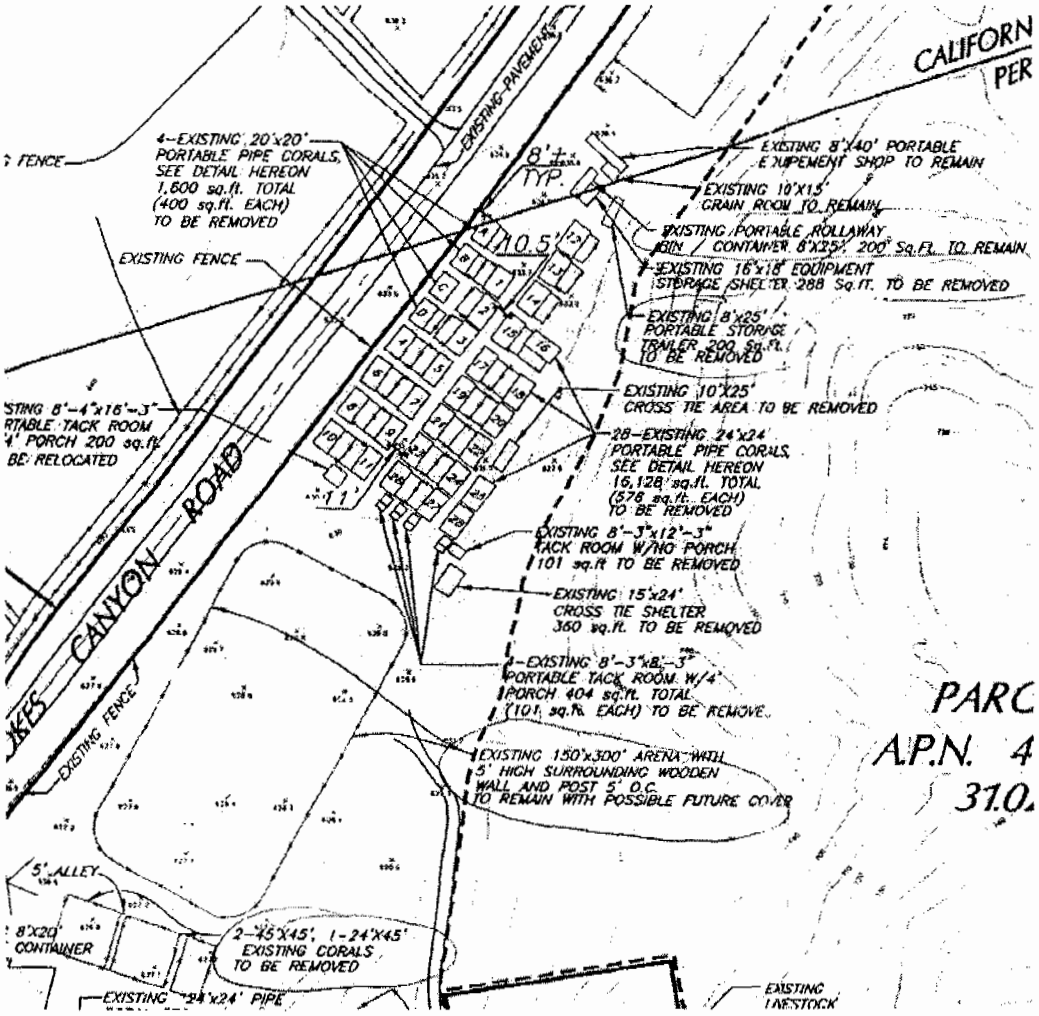


Exhibit 6
CDPA No. 4-02-131
Site Detail - North (Existing)

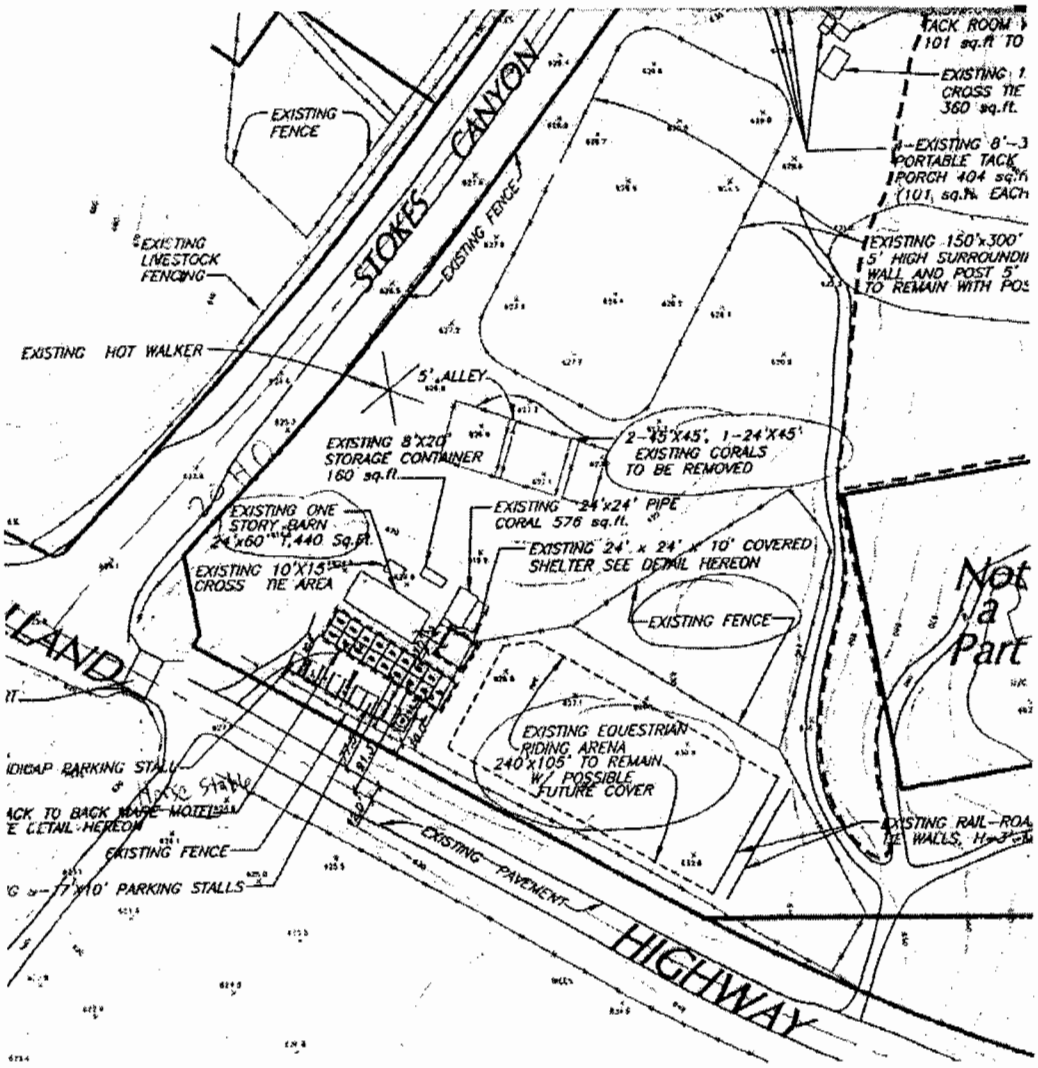
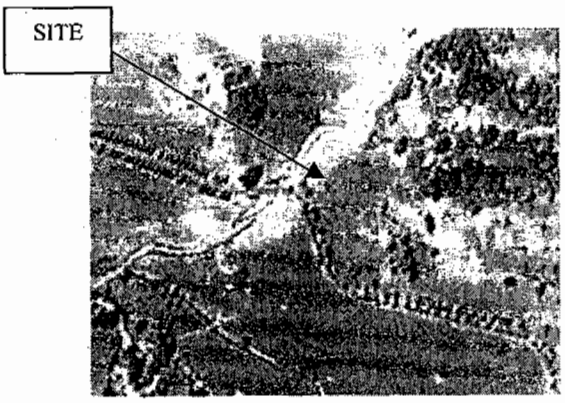
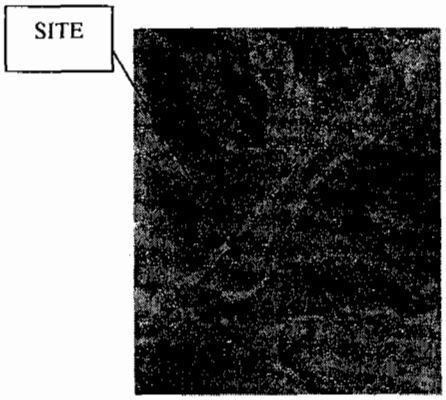


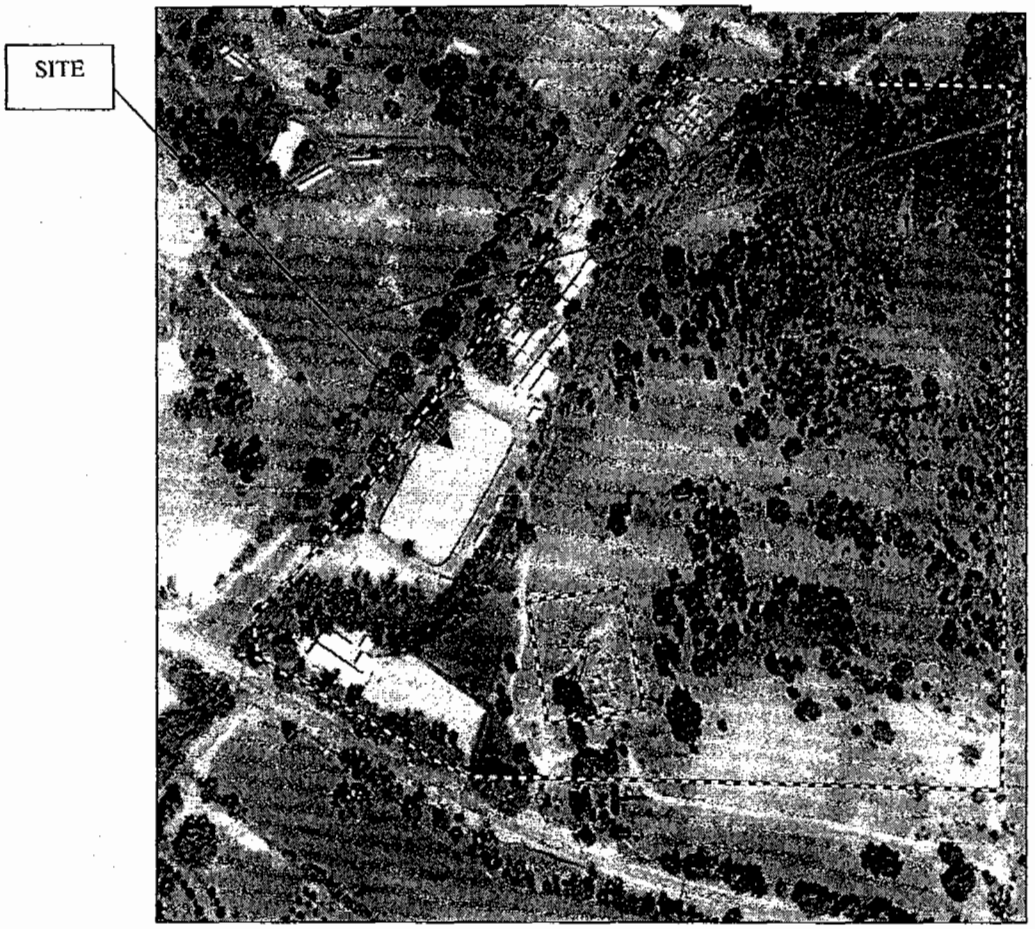
Exhibit 7
CDPA No. 4-02-131
Site Detail – South (Existing)



1952



January 24, 1977



2004

Exhibit 10
4-00-279-VRC
Aerial Photographs

From: "Ryan Todaro" <rtodaro@coastal.ca.gov>

Date: July 20, 2006 2:56:37 PM PDT

To: "Penny Elia" <greenp1@cox.net>

Cc: "Karl Schwing" <kschwing@coastal.ca.gov>

Subject: RE: Athens Group - Sandbag Project Withdrawl

Penny....The Athens Group has withdrawn their application for the sandbag placement/replacement project, which was scheduled for the August hearing with the intention of re-submitting a new application in the next couple of weeks, which will also include the fenced sediment basin. Please forward ALL of your concerns and ideas on how these concerns should be addressed immediately, so that we can begin analyzing these concerns/ideas. Thanks

From: "John Dixon" <jdixon@coastal.ca.gov>
Subject: **RE: Application 5-06-382 - LSA 2000 Bio Resources Assessment**
Date: March 14, 2007 10:20:23 AM PDT
To: "Penny Elia" <greenp1@cox.net>

Please send me the documents you mention. I may have them somewhere, but
they'd be in boxes from my move.

Thanks,

John

John D. Dixon, Ph.D.
Ecologist
California Coastal Commission
710 E Street, Suite 200
Eureka, CA 95501
707-445-5351
FAX 707-445-7877
jdixon@coastal.ca.gov
http://www.coastal.ca.gov

-----Original Message-----
From: Penny Elia [mailto:greenp1@cox.net]
Sent: Thursday, March 08, 2007 1:57 PM
To: Ryan Todaro
Cc: Mark Massara; Karl Schwing; Andrew Willis; Meg Vaughn; karen_goebel@fws.gov; Erinn Wilson; Pat Veesart; Marcia Hanscom; DMayer@dfg.ca.gov; Ken_Corey@fws.gov; Christine Chestnut; bhenderson@dfg.ca.gov; Sherilyn Sarb; John Dixon
Subject: Application 5-06-382 - LSA 2000 Bio Resources Assessment

Greetings, Ryan -

In reviewing the many, many files that you were so kind to provide me with the other day, I was able to cross-reference a lot of different documents, submittals and emails. I wanted to bring a few things to your attention, and please do forgive me if you have already connected the dots on all of this for the May hearing on 5-06-382:

You requested the LSA 2000 Biological Resources Assessment from Glenn Lukos Associates in January of this year. I found your request in the 5-06-382 file for the After-the-Fact permit for The Athens Group unpermitted development at Hobo Aliso Ridge. What I want to make sure you know is that during the EIR process, Michael Brandman Associates (EIR consultant) decided they would hire LSA to come in and do an "interim" biological resources assessment during an inappropriate time of year "after" the EIR was already in circulation and comments were being submitted by your agency along with many others, including those copied on this email (at the time, Brad Henderson was our contact with DFG).

What LSA did was to assign new values to biological resources on site and depart from the City's adopted habitat value ranking system and

- I didn't make copies of this, but it is in the file.

criteria stipulated in the General Plan, thus violating the General Plan policy. The correct application of General Plan criteria yields a habitat value assessment that differs significantly from that produced by Michael Brandman Associates (MBA). In particular, areas of habitat which should have been designated Very High Value habitat per the General Plan were assigned by MBA via LSA to categories of lesser value, a reassignment which has no basis in the General Plan. The General Plan explicitly includes Very High Value habitats within the definition of Environmentally Sensitive Areas (ESA) under the purview of the California Coastal Act. Both the General Plan and the Coastal Act prohibit new development in ESAs - including sandbagging which is considered "development."

The Sierra Club, in conjunction with the Hobo Aliso Neighborhood Association, hired David Bramlet to conduct a biological assessment of this same area following the release of the LSA/MBA assessment and we received sign off from Karlin Marsh as well as acknowledgment from her that LSA/MBA had altered the City's habitat ranking system which was based on her 1992 Biological Resources Inventory and is part of the City's General Plan.

On July 28, 2008, Sierra Club sent an External Memo along with the David Bramlet biological assessment to John Dixon, Karl Schwing and Meg Vaughn to relate the LSA/MBA resources assessment. [illegible] this memo are [illegible] Offer spiral bound document on the subject matter in the Driftwood State Beach Project Site, I am attaching that memo for [illegible]. We were never able to have the meeting that is requested in the memo, but I do hope that we might be able to review this document and its content as it relates to application 5-06-382. I also trust you will cross reference these two files (Driftwood Estates and 5-06-382) as you prepare the staff report for the May hearing. Should you, John, Meg or Karl need additional copies of this spiral bound document please advise me know. I will have copies made and overnighted to you immediately.

As always, thank you for considering this input. I believe the cross-referencing of several of the files you provided for my review would be very helpful to your efforts since there is so much information contained in various files that are linked only by their location (Hobo Aliso Ridge, South Laguna).

Best -

Penny Elia
Sierra Club
949-499-4499

Ryan Todaro

From: Penny Ella [greenp1@cox.net]
Sent: Thursday, April 05, 2007 9:02 AM
To: Christine Chestnut
Cc: Mark Massara; Karl Schwing; Andrew Willis; Marco Gonzalez; Lisa Haage; Pat Veesart; Marcia Hanscom; Ryan Todaro; John Dixon
Subject: Athens Newest Plans for Hobo Aliso Ridge and Restoration Area - Land Swap with YMCA


AthensPlan4-4-07.JATT147861.txt (70 PG (1 MB) B)

Good morning, Christine -

I sincerely appreciate knowing the Restoration/Monitoring Order for Hobo Aliso Ridge is on its way to The Athens Group in light of the fact that I attended a meeting last night for the unveiling of their newest project plan. They reported that they would be filing their application in the next two weeks to the City of Laguna Beach. The City has hired a planner to work on this project and Athens is paying for that new employee with a "large down payment that is being used for payment on an hourly rate." This is certainly an interesting concept.. the applicant pays the planner to process their application. How novel

What is rather curious to many of us is that they continue to propose a "recreational area" in the restoration/monitoring site that they have promised to the YMCA. As we discussed before this is a land swap of approximately 2.8 acres behind their existing golf course which is currently owned by the YMCA for land directly in the significant watercourse/restoration/monitoring area. They have now changed the name from Driftwood Estates to Aliso Lots - FYI.

Can you please help me understand how this is possible? If the current order is for a minimum of 5 years, how can they be promising this to the YMCA for a recreational zone that would be part of an application that's being filed in two weeks? A regional YMCA facility??

Since they didn't provide any handout materials, I don't have anything to provide you in writing, but am attaching one rather poor photo that calls out the YMCA parcel. As you'll note it's right in the restoration area. When John Mansour was asked by the audience where the YMCA representative was for comment, he said that there wasn't a need for the YMCA to be involved in the public meetings, that the deal was agreed upon and more "program details" would unfold as the application proceeded through City Hall. The land swap deal has been agreed upon? Does the YMCA understand what they are swapping for? Are they aware of the Restoration Order?

John Mansour and Martyn Hoffmann spoke to a lot of rezoning of this entire area.

Could you or someone on staff that's been working on all of this please let me know your thoughts. Has the YMCA been contacted by CCC?

Many thanks -

Penny
949-499-4499

Ryan Todaro

From:	Penny Elia [greenp1@cox.net]
Sent:	Friday, April 06, 2007 2:07 PM
To:	Christine Chestnut
Cc:	Mark Massara; Karl Schwing; Andrew Willis; Marco Gonzalez; Lisa Haage; Pat Veesart; Marcia Hanscom; Ryan Todaro; John Dixon
Subject:	Athens Newest Plans for Hobo Aliso Ridge and Restoration Area - Land Swap with YMCA

Proposed Specific Plan Land Us... (KB) ATT398497.txt (2 KB) AthensPlan4-4-07.J PG (1 MB) ATT398498.txt (70 B)

Please find attached a cleaner version of the map labeled with RECREATION in the Restoration/Monitoring Area. Has anyone on staff let the YMCA know about this? Athens tells us this is a done deal and it was published again in the newspapers today. I can't imagine the Y taking on this type of fiscal responsibility when they have a piece of land that could be accessed "if" Athens wasn't planning on putting a golf course on it.

Also, based on this mapping, it appears the footprint of the Aliso Creek Inn & Golf Course grows every time we have "Town Hall" meeting...

Thanks for any light you can shed.

Penny

1

5

Ryan Todaro

From: Penny Elia [greenp1@cox.net]
Sent: Monday, April 16, 2007 4:24 PM
To: Ryan Todaro
Cc: John Dixon; Mark Massara; Marcia Hanscom; Andrew Willis; Karl Schwing; Marco Gonzalez; Meg Vaughn
Subject: Re: Staff Report - Hobo Aliso Ridge After-the-Fact Permit

1. Pads are usually the "approved buildable area within a lot" and the footprint of the structure.

2. According to John Tettemer & Associates submission of the site plan for the project (CDP 5-98-151), what you are referring to is termed "(4) construct berm and/or excavate for desilting basin per detail 2 on sheet 4." (This sheet 4 is missing from Tettemer's submittal.) These basins all indicated on the plan map with a #4.

Anything staff can do to eliminate the term "lots" or "pads" will be greatly appreciated as always by the Sierra Club.

Penny

On Apr 16, 2007, at 3:51 PM, Ryan Todaro wrote:

> Penny.....We'll be careful with the language we use and we'll be as
> clear as we can about what we think is permitted and what is not. Can
> you please explain what the problem is with the word pad? It's very
> descriptive of what is out there and I don't see how using that word
> would suggest that the pads are somehow permitted as building sites
> (which they aren't).
>
> -----Original Message-----
> From: Penny Elia [mailto:greenp1@cox.net]
> Sent: Monday, April 16, 2007 2:40 PM
> To: Ryan Todaro
> Cc: John Dixon; Mark Massara; Andrew Willis; Marcia Hanscom; Karl
> Schwing; Marco Gonzalez; Meg Vaughn
> Subject: Staff Report - Hobo Aliso Ridge After-the-Fact Permit
>
> Dear Ryan -
>
> We respectfully request that the terms "lots" and "pads" not be used
> within the language of the upcoming staff report. These labels are
> incorrect and misleading. The California Subdivision Map Act (CA
> Government Code 66410) states:
>
> ..."final map." When all of the conditions set out in the approved
> tentative map have been satisfied and when compliance is certified by
> city or county officials, the local agency will approve a final map.
> The subdivider may now record the map at the County Recorder's office.
> Lots within the subdivision cannot be sold and are not legal divisions
> of land until a final map has been recorded....
>
> The "Driftwood Estates" site, the focus of the permit, is located on
> the Hobo Aliso Ridge (a white hole/area of deferred certification).
> The sandbagged berms and related structures found on this site are all
> the product of unpermitted development and do not constitute "pads" or
> "lots."
>
> Thank you -

Christine Chestnut

From: Andrew Willis
Sent: Friday, December 07, 2007 9:26 AM
To: Lisa Haage; Christine Chestnut
Subject: RE: Driftwood Estates - Emergency Request

This didn't slip under our radar, I worked all day yesterday with permitting and Athens to authorize the emergency sandbags, carefully. I had to leave before the authorization went out, so I didn't have a chance to talk to Penny, but I asked Karl to and he did.

-----Original Message-----
From: Lisa Haage
Sent: Thursday, December 06, 2007 5:58 PM
To: Andrew Willis; Christine Chestnut
Subject: FW: Driftwood Estates - Emergency Request

You were also probably bccs on this. I am certain we will hear more about this tomorrow.

-----Original Message-----
From: Karl Schwing
Sent: Thursday, December 06, 2007 5:54 PM
To: 'Martyn Hoffmann'
Subject: Driftwood Estates - Emergency Request

Mr. Hoffmann - At approximately 4:30 this afternoon we received your written request for emergency authorization to place sandbags on the Driftwood Estates property in order to address flooding and debris flow anticipated due to heavy rains expected to begin this evening. We have not had time to prepare a formal emergency permit for this work to begin at this time. As time allows we will prepare a permit. Terms and conditions will be placed on such authorization. During our telephone conversation at 4:45 this afternoon you verbally augmented the description of your written request to indicate that the work would be carried out as follows:

- Sandbags will be added to the existing sandbag berm to raise the elevation such that water will be directed away from homes and toward the street and storm drain system. There will be no change to the footprint of existing sandbags located on the site.
- No vegetation clearance will occur
- Existing sandbags stockpiled on the paved driveway will be used - no additional sandbags will be imported to the site to carry out the work proposed. At most, 300 sandbags will be placed; less if possible. Work will be limited such that sandbag placement upon existing sandbags does not extend beyond the mouth of the watercourse
- Once the threat dissipates, all sandbags placed to respond to the threat will be removed
- A biologist will document current conditions prior to sandbag placement
- Upon completion of work, a follow-up report will be submitted identifying the precise limits of sandbag placement, the quantity of sandbags placed, methods of placement, biological conditions prior to sandbag placement, biological conditions after sandbag placement, and a workplan to remove the sandbags placed once the threat dissipates

Please accept this e-mail message as authorization to place sandbags in a manner consistent with the understanding above and acknowledgement that additional conditions may be imposed once the final emergency permit is issued.

Karl Schwing
South Coast Area Office
California Coastal Commission

Karl Schwing

From: Penny Elia [greenp1@cox.net]
Sent: Monday, December 17, 2007 4:27 PM
To: Karl Schwing
Cc: Mark Massara; Doug Carstens; Andrew Willis; Lisa Haage; Pat Veesart; Sherilyn Sarb; Christine Chestnut; Jeff Staben; Alex Helperin
Subject: Hobo Aliso Ridge - Continuing Enforcement Action

Good afternoon, Karl -

I am writing in reference to the November 29, 2007 "Notice of Incomplete Claim of Vested Rights" letter you wrote to Rick Zbur, Latham & Watkins.

I would like to specifically address the last sentence of the first paragraph:

"Please accept this letter as notification that your claim is not "filed" for purposes of Section 13201- 13206 pending receipt of additional information necessary for a thorough analysis of your claim by the Commission staff."

It is our understanding that since this claim is "not" filed, it is a nullity and that Commission staff will proceed forthwith in all enforcement matters that are currently outstanding. This includes enforcement action on Notice of Violation File Numbers V-5-06-029 and V-5-07-006.

Your earliest acknowledgment of this understanding would be most appreciated.

Thank you -

Penny Elia
Sierra Club
949-499-4499

From: Penny Elia [mailto:greenp1@cox.net]
Sent: Tuesday, December 18, 2007 2:36 PM
To: Alex Helperin
Subject: Fwd: Hobo Aliso Ridge - Vested Rights in an established Fuel Break Zone + Malibu Valley Farms Vested Rights Denial

Good afternoon, Alex -

I just left you a vm and am hoping that I might have an opportunity to speak with you or Christine Chestnut before week's end. I am forwarding an email to you that I sent to Karl Schwing earlier this month.

Thank you for your time. I look forward to speaking with you.

Penny Elia
Sierra Club
949-499-4499

Begin forwarded message:

From: Penny Elia <greenp1@cox.net>
Date: December 5, 2007 8:32:26 AM PST
To: Karl Schwing <kschwing@coastal.ca.gov>
Cc: Mark Massara <mark.massara@sierraclub.org>, Doug Carstens <dpc@cbcearthlaw.com>, Andrew Willis <awillis@coastal.ca.gov>, Lisa Haage [redacted], Pat Veesart <pveesart@coastal.ca.gov>, Christine Chestnut <cchestnut@coastal.ca.gov>, Deborah Lee <dlee@coastal.ca.gov>, ssarb@coastal.ca.gov, John Dixon <jdixon@coastal.ca.gov>
Subject: Hobo Aliso Ridge - Vested Rights in an established Fuel Break Zone + Malibu Valley Farms Vested Rights Denial

Good morning, Karl -

Thanks for your time on the phone yesterday.

Since processing a vested rights application is new to you, I wanted to share a few thoughts:

1. Ken Frank has stated that Zone 11 (Hobo Aliso Ridge) and Zone 10 (contains a portion of Hobo Aliso Ridge/Athens land) are long established fuel break zones. Andrew has maps of this area indicating that they are not only fuel break zones, but areas with very high-value habitat on them as well as endangered species. How is it that a City can claim an area as a fuel break zone yet a developer and their law firm come in and ask for vested rights for illegally graded areas that will support future subdivision development? I'm sure Andrew has shared these maps with you, but I would happy to send everything I have should you need more evidence and supporting documentation (the County of

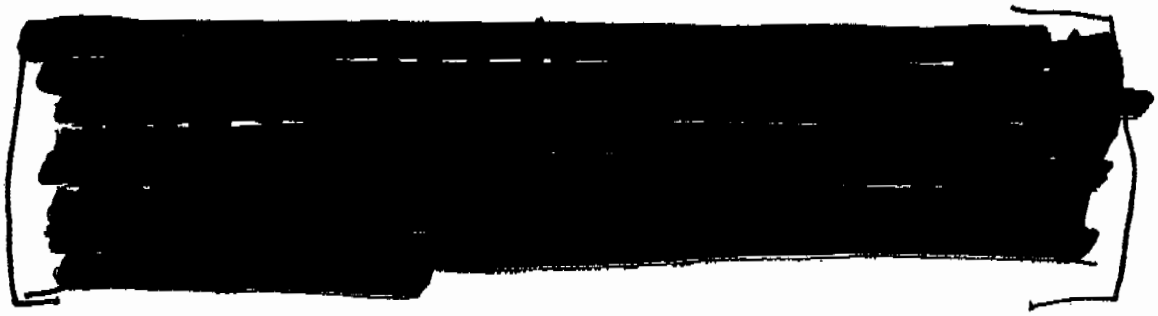
Orange has volumes of info on this as well). Unfortunately, the files are too large for me to email to you so I would need an alternate transmission email. Having said that, we are NOT in favor of this continuing to be a fuel break zone since it contains such very high-value habitat and endangered species, but that certainly is far superior to estates.

2. As for Dr. Dixon's determination of Hobo Aliso Ridge as "degraded ESHA," what are the "biological reports that contradict this position" that Latham Watkins reference in their cover letter? The only biological reports and assessments that we have seen and have in our possession indicate that this area is historically ESHA (or as referenced in many other reports as Southern Maritime Chaparral combined with endangered species and habitat for gnatcatchers). We have reports from multiple accredited biologists, gnatcatcher surveys, etc. Many of those documents are referenced in Dr. Dixon's determination, but I see nothing provided by Latham Watkins to contradict Dr. Dixon.

3. Please note the Malibu Valley Farms vested rights case from November 2006. This application was denied and staff did an outstanding job on this. November 15, 2006 item 15a

a. **Claim of Vested Rights No. 4-00-279-VRC (Malibu Valley, Los Angeles County)** Public hearing and action on claim of vested rights by Malibu Valley, Inc. for agricultural and livestock activities and as-built equestrian facility at 2200 Stokes Canyon Road, Santa Monica Mountains, Los Angeles County. (LF-V) **[DENIED]**

4. As for this area being referred to as "pads" we request as we have in the past that staff refrain from using this term as these are actually catch basins that should have been properly vegetated with CSS years ago per DFG requirements and CDP conditions.



Thank you for your time and consideration of this information.

Best -

Penny Elia
Sierra Club
949-499-4499

Karl Schwing

From: Karl Schwing
Sent: Friday, March 28, 2008 9:38 AM
To: 'Penny Elia'
Subject: RE: Driftwood VRC - Response Letter

Hi **Penny**, you're welcome...and THANK YOU for your willingness to pursue these documents. Wish your mom well.

Also, the Laguna Beach report should be posted on line by the end of the day today.

- Karl

-----Original Message-----
From: Penny Elia [mailto:greenp1@cox.net]
Sent: Friday, March 28, 2008 7:36 AM
To: Karl Schwing
Cc: lthornton@coastal.ca.gov
Subject: Re: Driftwood VRC - Response Letter

Thank you. I have my list and will be furiously working on it. My mom is having surgery next week so I'm having to work around that. It may be end of week before I have the docs, but you and Louise were very helpful in getting me on the right track.

Also, any idea when the Laguna Beach LCP staff report will be online?

Thanks again!

P.

On Mar 27, 2008, at 4:24 PM, Karl Schwing wrote:

Per your request...

<<2008.03.17 5-07-412-VRC CCC Response to 3.7.08 ltr.pdf>>

Karl Schwing
South Coast Area Office
California Coastal Commission
<2008.03.17 5-07-412-VRC CCC Response to 3 7 08 ltr pdf>

Karl Schwing

From: Penny Elia [greenp1@cox.net]
Sent: Saturday, March 29, 2008 12:08 PM
To: Karl Schwing
Subject: Hobo Aliso Neighborhood Tracts - 1616 and 2067

Karl -

I shared these tract maps and docs with Andrew a few weeks ago. Have you and Louise had a chance to review them to see if they might apply? I will be searching for the permits for both of these tracts next week, but want to make sure you have these to start with. Perhaps Louise can find a use for them or get a clue as to how they might be "contemporaneous" with the Esslinger permits we are looking for. We seem to be missing a piece of the tract that includes the rest of Marilyn Drive - I'm working on that. You'll note back in the 50s that the streets were named after the Esslingers, i.e. Esslinger Drive. Marilyn Drive is named after Marilyn Esslinger. They owned EVERYTHING at one time and felt they had the power to do as they wished with respect to grading, blasting, etc.

P.

Karl Schwing

From: Karl Schwing
Sent: Wednesday, April 02, 2008 1:26 PM
To: 'greenp1@cox.net'
Subject: Driftwood Vested Rights Claim

Hi Penny,

You previously requested that I advise you when we receive a response to our letter to Driftwood dated 3/17/08. We received a response today. It includes a letter with many attachments. The attachments are primarily grading and building code ordinances adopted by the County from 1959 to 2003 (Ord No.s 1183, 1504, 1804, 1848, 1868, 1970, 2261, 2287, 2314, 2468, 2742, 2800, 3279, 3791, 3815, 3913, 98-15, 03-012), and grading/building code ordinances adopted by the City of Laguna Beach from 1976 to 2004. The entire package is quite thick (thicker than a ream of paper, probably 500-600 pages), so, I doubt I'll be scanning this one. If you wish to view this package or obtain a copy, please let me know. Thanks.

Karl Schwing
South Coast Area Office
California Coastal Commission

1
13

Karl Schwing

From: Penny Elia [greenp1@cox.net]
Sent: Saturday, April 12, 2008 1:40 PM
To: Louise Warren
Cc: Andrew Willis; carrie teasdale; Karl Schwing
Subject: Re: Hobo Aliso Ridge Vested Rights Brief & Supporting Docs

Hi Louise -

The hearing was much longer and more involved than I anticipated and cell phone reception on the train coming home was spotty, so please forgive me for not calling.

At Karl's request, I am sending a package of ALL of our info to you via Priority Mail on Monday. I have a package prepared for you and Karl so that you don't have to scan, share, etc. I thought this might make things easier.

The NOP for the entire Aliso Project came out last week. From the feedback I'm getting from the community, everyone is rather shocked at the planned intensification and the severe impacts of the proposed project. Personally, I'm not shocked, just saddened that The Athens Group has refused to listen to anyone in the environmental community.

Once you receive the package of documents I would appreciate speaking with you all via teleconf. Carrie is also available if you would like to chat with her.

Thanks much -

P.

On Apr 9, 2008, at 4:24 PM, Louise Warren wrote:

> Hi Penny,
>
> I would be happy to talk to you about the brief you sent yesterday. I will be in the office for most of the day tomorrow.
>
> -Louise
>
> -----Original Message-----
> From: Penny Elia [mailto:greenp1@cox.net]
> Sent: Wednesday, April 09, 2008 8:02 AM
> To: Louise Warren
> Cc: Karl Schwing; Andrew Willis
> Subject: Hobo Aliso Ridge Vested Rights Brief & Supporting Docs
>
> Hi Louise -
>
> I sent a 42-page fax to Andrew late yesterday. I would be happy to resend the document to you if that would be helpful for a teleconf. I will be leaving for the hearing in Santa Barbara later this morning, so please let me know if you would like me to send the fax as soon as possible. Please also let me know a good time for us to get together by phone.
>
> Many thanks -
>
> Penny
> 949-499-4499

>
>
>
>
>
> On Apr 7, 2008, at 3:43 PM, Louise Warren wrote:
>
>> Hi Penny,
>>
>> We'd love to talk to you about your research whenever you have a
>> chance. Please just let us know when you are available, and we'll try
>> to coordinate a conference call.
>>
>> Thanks,
>> -Louise
>>
>> -----Original Message-----
>> From: Penny Elia [mailto:greenp1@cox.net]
>> Sent: Saturday, April 05, 2008 8:46 AM
>> To: Louise Warren; Karl Schwing
>> Cc: Andrew Willis
>> Subject: Chronology of violations at Hobo Aliso Ridge
>>
>> Louise and Karl -
>>
>> I would once again appreciate spending just a few minutes with you to
>> review the docs I faxed over, some additional info I have found and
>> some info that I found interestingly "missing" from Orange County
>> archives. Even the archives librarian found it incredibly strange
> that
>> documents related to this land were gone - just gone.
>>
>> Please find attached a document I was asked to prepare by one of the
>> Sierra Club attorneys. He felt this was an important tool for our
>> pending lawsuit. I haven't updated it since last June, so it is
>> missing the infamous emergency nuisance abatement order for the fuel
>> break clearing and the other emergency for permit for sandbagging.
>> If these actions weren't so upsetting I would have to laugh at the
>> way Athens and the City goes about destroying our natural resources.
> Quite
>> clever and diabolical to be sure.
>>
>> Hoping you find this chronology helpful and that you have some time
> for
>> me next week. I will be in Santa Barbara Wednesday eve and all day
>> Thursday at the CCC hearing. There will be quite a few of us
>> speaking in opposition to the Coastal Cities Subcommittee.
>>
>> Best -
>>
>> Penny Elia
>> Sierra Club
>> 949-499-4499
>>
>

Karl Schwing

From: Karl Schwing
Sent: Wednesday, April 09, 2008 8:58 AM
To: 'Penny Elia'; Louise Warren
Cc: Andrew Willis
Subject: RE: Hobo Aliso Ridge Vested Rights Brief & Supporting Docs

Penny, we rec'd the fax here in Long Beach. I scanned it and distributed it Louise and Andrew. I recommend you follow up by sending a hard copy of the entire document with attachments via regular mail or courier to the Long Beach office - a lot of the attachments rec'd via fax were not very legible.

Thanks.

- Karl

-----Original Message-----
From: Penny Elia [mailto:greenpl@cox.net]
Sent: Wednesday, April 09, 2008 8:02 AM
To: Louise Warren
Cc: Karl Schwing; Andrew Willis
Subject: Hobo Aliso Ridge Vested Rights Brief & Supporting Docs

Hi Louise -

I sent a 42-page fax to Andrew late yesterday. I would be happy to resend the document to you if that would be helpful for a teleconf. I will be leaving for the hearing in Santa Barbara later this morning, so please let me know if you would like me to send the fax as soon as possible. Please also let me know a good time for us to get together by phone.

Many thanks -

Penny
949-499-4499

On Apr 7, 2008, at 3:43 PM, Louise Warren wrote:

> Hi Penny,
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> chance. Please just let us know when you are available, and we'll try
> to coordinate a conference call.
>
> Thanks,
> -Louise
>
> -----Original Message-----
> From: Penny Elia [mailto:greenpl@cox.net]
> Sent: Saturday, April 05, 2008 8:46 AM
> To: Louise Warren; Karl Schwing
> Cc: Andrew Willis
> Subject: Chronology of violations at Hobo Aliso Ridge
>
> Louise and Karl -

>
> I would once again appreciate spending just a few minutes with you to
> review the docs I faxed over, some additional info I have found and
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> archives. Even the archives librarian found it incredibly strange
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> speaking in opposition to the Coastal Cities Subcommittee.
>
> Best -
>
> Penny Elia
> Sierra Club
> 949-499-4499
>

Karl Schwing

From: Karl Schwing
Sent: Thursday, June 26, 2008 12:41 PM
To: 'Penny Elia'
Subject: RE: Evidence of blasting at Hobo Aliso Ridge

Penny, thanks for this. I'm not sure who 'lthornton' is...did you mean to send this to Louise Warren? If so, I've already forwarded it to her. But in the future, if you wish to include Louise on an e-mail, hers is lwarren@coastal.ca.gov

- Karl

-----Original Message-----
From: Penny Elia [mailto:greenp1@cox.net]
Sent: Thursday, June 26, 2008 10:49 AM
To: lthornton@coastal.ca.gov; Karl Schwing; John Dixon
Cc: Andrew Willis
Subject: Evidence of blasting at Hobo Aliso Ridge

This is the area where most of the blasting was done due to the fact that a bulldozer was unable to get through these rock formations (San Onofre Brecchia). When they did this blasting our historians tell us that the rocks flew all the way across Coast Hwy. and landed in the parking lot of the little coffee shop that used to be there. The last developer that attempted a subdivision in this area from 2001 - 2003, prior to the Athens purchase, assured me that the arroyo (I believe that's the correct term for the rock formation in the middle of the photo) would have to be blasted in order for him to get his lot in there. However, he did finally agree to building around this landform. My point is, we have recent confirmation from another developer that this was blasted in the 60s and that it would in fact require blasting again if development were to occur in this area. We still contend an ultra hazardous permit would have been required even in the early 60s for this type of intense blasting. Also, there's crownbeard growing all over this "rock" so the topsoil issue is a non issue as long as there is overstory. Note the laurel at the top of the arroyo where most of the crownbeard is growing.

Louise Warren

From: Penny Elia [greenp1@cox.net]
Sent: Monday, August 11, 2008 7:33 AM
To: Andrew Willis; Karl Schwing; Louise Warren
Cc: Mark Massara; Doug Carstens; Lisa Haage; Pat Veesart; Sherilyn Sarb; John Dixon; Fred Roberts; sara wan; Pat Kruer
Subject: Vested Rights - Hobo Aliso Ridge - additional area of restoration - resolution before October hearing

Good morning, Louise, Karl and Andrew -

After my 100th review of the Athens vested rights claim staff report and exhibits, I'm hoping that you all will be able to address the other outstanding violation (removal of Big-leaved Crownbeard and overstory) on Athens' land immediately above 30662 Marilyn Drive (Steve Gromet residence) before the rescheduled vested rights hearing in October.

Latham & Watkins and PCR have both indicated this violation area, still awaiting restoration, as part of their claim to vested rights (it's on multiple maps that have been submitted). It's a noticeable bubble and I continue to be confused as to why an area that has been cleared of an endangered species and its overstory (Ceanothus, Laurel Sumac, etc. - photos on file, on CD and in the Aliso Project NOP Comments from Elia), is under enforcement action and has outstanding forensics studies mandated by staff, can possibly be a part of their vested rights claim.

I have volumes of information on this case, including the original emails I sent to the homeowner years ago advising him that his crew that was on the slope was dangerously close to destroying an endangered species. Those are in your files. I even sent the homeowner photos of exactly what they were going to destroy. Those are in your files. He didn't heed my warning and went on with the destruction, only to be reported by Martyn Hoffmann of Athens Group. This was a HUGE area of Big-leaved Crownbeard.

I would like to request a meeting to discuss this prior to the October hearing please. That way, I could provide you with all the organized photos, exhibits and communications on this issue and perhaps better understand the delay in resolve and the inclusion of this area in the Latham & Watkins vested rights claim. I am brutally aware of staff's work load, so I do not ask for this meeting to add to that work load, but to merely afford the public the opportunity a better understanding of the situation at hand before it comes before the Commission.

Thank you all for your excellent work on the August staff report. As Mark Massara told the Commission on Thursday, it's absolutely unacceptable for Athens to postpone an item like this and then appear at the very hearing it was to be heard only to create more confusion and delay.

I look forward to hearing from you.

Best -

Penny Elia
Sierra Club
949-499-4499

Louise Warren

From: Penny Elia [greenp1@cox.net]
Sent: Wednesday, September 03, 2008 10:43 AM
To: Louise Warren; Mark Johnsson
Subject: Fwd: Aerial photos 1931/1960 - Hobo Aliso Ridge area - South Laguna

Once you have a chance to review the soils report and trench logs you'll note that many of the borings show covered habitat which matches up to these photos from the early/original grading. Mark, I hope you are able to view the entire CD we sent to John van Coops.

Begin forwarded message:

> **From:** Penny Elia <greenp1@cox.net>
> **Date:** July 29, 2008 12:20:51 PM PDT
> **To:** John Dixon <jdixon@coastal.ca.gov>
> **Cc:** jvancoops@coastal.ca.gov
> **Subject: Aerial photos - Hobo Aliso Ridge area - South Laguna**
>
> Dr. John -
>
> We will be overnighting a CD with all the UCSB aerials to John van Coops later today. Please find attached an exhibit we worked up to illustrate our new concerns about the original grading and blasting.
>
> Thanks much -
>
> Penny and Dan Elia
> Sierra Club
> 949-499-4499

Karl Schwing

From: Louise Warren
Sent: Thursday, September 25, 2008 12:57 PM
To: Karl Schwing
Subject: FW: Evidence of blasting at Hobo Aliso Ridge

-----Original Message-----
From: Penny Elia [mailto:greenp1@cox.net]
Sent: Wednesday, September 03, 2008 10:39 AM
To: Louise Warren; Mark Johnsson
Subject: Fwd: Evidence of blasting at Hobo Aliso Ridge

Hi Louise and Mark -

Louise, for some reason I sent several emails to lthornton - - don't ask me why. Here's a resend since this never reached you. I have one more email/photo exhibit to share with you and Mark as well. However, I do believe the trench logs and soils report are what you really need. I will be copying those and sending asap.

Thank you -

P.

Begin forwarded message:

From: Penny Elia <greenp1@cox.net>
Date: June 26, 2008 10:49:15 AM PDT
To: lthornton@coastal.ca.gov, Karl Schwing <kschwing@coastal.ca.gov>, John Dixon <jdixon@coastal.ca.gov>
Cc: Andrew Willis <awillis@coastal.ca.gov>
Subject: Evidence of blasting at Hobo Aliso Ridge

This is the area where most of the blasting was done due to the fact that a bulldozer was unable to get through these rock formations (San Onofre Brecchia). When they did this blasting our historians tell us that the rocks flew all the way across Coast Hwy. and landed in the parking lot of the little coffee shop that used to be there. The last developer that attempted a subdivision in this area from 2001 - 2003, prior to the Athens purchase, assured me that the arroyo (I believe that's the correct term for the rock formation in the middle of the photo) would have to be blasted in order for him to get his lot in there. However, he did finally agree to building around this landform. My point is, we have recent confirmation from another developer that this was blasted in the 60s and that it would in fact require blasting again if development were to occur in this area. We still contend an ultra hazardous permit would have been required even in the early 60s for this type of intense blasting. Also, there's crownbeard growing all over this "rock" so the topsoil issue is a non issue as long as there is overstory. Note the laurel at the top of the arroyo where most of the crownbeard is growing.

CALIFORNIA COASTAL COMMISSION
South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302
(562) 590-5071

July 8, 2008

Greg Vail
Driftwood Properties, LLC
c/o The Athens Group – Greg Vail
31106 Coast Highway
Laguna Beach, CA 92651

SUBJECT: NOTICE OF INITIAL DETERMINATION REGARDING DRIFTWOOD PROPERTIES, LLC'S CLAIM OF VESTED RIGHTS
File No. 5-07-412-VRC
Site: Driftwood Estates, Laguna Beach
Applicant: Driftwood Properties, LLC
Agents: Rick Zbur and Loren Montgomery

Dear Mr. Vail:

On June 2, 2008, our office received a letter from Rick Zbur supplementing Driftwood Properties LLC's ("Driftwood") claim for a vested right to the graded pads on the Driftwood Estates property, located at the northern end of Driftwood Drive in Laguna Beach. Based on the information provided in that letter, as well as the March 7, 2008 and April 2, 2008 letters from Rick Zbur and the Claim for Vested Rights submitted to this office in November 2007, we have made an initial determination that Driftwood's claim for vested rights has not been sufficiently substantiated and that it should be denied.

We will schedule this matter for a hearing before the California Coastal Commission at the August 2008 hearing for its determination as to whether Driftwood has adequately substantiated its claim of a vested right to the graded pads.

If you have any questions about this initial determination, please contact Karl Schwing or myself at 562-590-5071.

Sincerely,

Teresa Henry
Manager, South Coast District

cc: John Mansour, The Athens Group
Rick Zbur, Latham & Watkins
John Montgomery, City of Laguna Beach

Attachment 3

BETTY C. CARRIE TEASDALE, Esq., State Bar No. 231285
The Law Office of Betty C. Carrie Teasdale
400 East Las Palmas Drive
Fullerton, California 92835
Telephone: 714-871-2288
Facsimile: 714-871-2288

Date: April 8, 2008

To: California Coastal Commission
South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, California 90802-4302
562-590-5071

Re: Site: Driftwood Estates, Laguna Beach
Applicant: Driftwood Properties, LLC
Agents: Rick Zbur and Loren Montgomery

BRIEF IN SUPPORT OF NOTICE OF INCOMPLETE CLAIM OF VESTED RIGHTS

Summary

A developer, Driftwood Properties, LLC ("developer") is claiming that it has vested rights to develop a 200+ acre site in Laguna Beach, which it purchased in 2004 after prior development was stalled by environmental constraints. However, no permits were obtained, no development agreement was negotiated, and no vesting tentative map was recorded, negating the developer's claim to any vested rights. Further, it appears that the grading, and probably blasting, was done without permits, is therefore illegal, and cannot be relied upon for even a claim of right to grade.

Under California law, the developer has no vested rights to develop this land. There are only three ways to obtain vested rights:

(1) under the common law, by obtaining the proper permits, which must specifically set forth the size, type, height, etc. of the buildings to be constructed.
(2) by negotiating and signing a development agreement with the city/county, which usually involves granting concessions to the city/county (underground utilities, parkland, etc.)
(3) by recording a document titled "Vesting Tentative Subdivision Map" under the Subdivision Map Act.

The developer, and its predecessors, did none of the above. The original developer's actions amounted only to rough grading - so rough that sandbags are now needed to prevent erosion of pads that

were bulldozed sometime between 1937 and 1962. No permits are on file for any of this grading, even though permits were required from 1927 on for grading in excess of 50 cubic yards.

The mere act of rough grading, without any permits, does not confer any vested rights. Even installing utilities and roads is not sufficient to confer vested rights under California law. The California Coastal Commission has the authority to stop all development – especially illegal development – on land within its jurisdiction, and will have the final word in this dispute.

Material Facts

1. The land in dispute consists of approximately 200 acres and is located at the northern terminus of Driftwood Drive, Laguna Beach, Orange County, California, APN 056-240-65 and 656-191-40.

2. This land was purchased by a prior developer in 1937 and graded into pads sometime between 1937 and 1962.

3. The land was originally in the County of Orange, and was annexed to the City of Laguna Beach on December 31, 1987.

4. California's Uniform Building Code requires permits for any grading greater than 50 cubic yards, as shown by the pertinent section of this document attached hereto as Exhibit A and incorporated by reference as if fully set forth herein.

5. No permits for grading, construction, or any other building activities are on file with either the County of Orange Hall of Records or the City of Laguna Beach.

6. In 2004 the land was purchased by Driftwood Properties, L.L.C., now represented by Latham and Watkins, who then applied for permits from the California Coastal Commission and the City of Laguna Beach to develop the land.

7. On May 4, 2007, the California Coastal Commission issued a Notice of Violation. On November 29, 2007, the California Coastal Commission issued a Notice of Incomplete Claim of Vested Rights to enforce coastal commission regulations, then issued a 2nd Notice of Incomplete Claim of Vested Rights on March 17, 2008, essentially refusing permission to develop the land under its authority.

//

8. The developer submitted rebuttal letters with extensive documentation attached to the Coastal Commission dated November 20, 2007 and March 7, 2008, claiming vested rights to develop the land. No permits for either grading or construction were among these attachments.

A. THE DEVELOPER HAS NO VESTED RIGHTS TO THE LAND

The developer claims vested rights to develop the land, but its arguments are erroneous and contrary to controlling precedent.

The developer contends that it had - somehow - been led to believe that the City of Laguna Beach and the California Coastal Commission would approve its development of the land, even though none of its predecessors had obtained any permits even for the grading, let alone for any actual construction. Further, none of these predecessors bothered to record even a tentative subdivision map, or negotiate a development agreement with either the County of Orange or the City of Laguna Beach.

The developer has no fundamental right to develop land merely because it purchased the land, without due diligence to check if development was possible. A refusal to allow development will not interfere with the developer's fundamental rights or economic rights, because the developer will still own the land, in the same state in which it purchased the land.

1. THE CURRENT CONTROLLING PRECEDENT CASE LAW

The controlling precedent case is Avco Community Developers, Inc. v. South Coast Regional Commission (1976) 15 Cal.3d 720 [125 Cal.Rptr. 896], which also involved development in Orange County, California. Avco has been the leading case on common law vested rights for more than 30 years, because it established the rule of common law vested rights. In Avco, the California Supreme Court held that "a developer's right to complete a project as proposed does not vest until (1) a valid building permit, or its functional equivalent, has been issued, and (2) the developer has performed substantial work and incurred substantial liabilities in good faith reliance on the permit." Id. t p. 791.

According to the Avco court, "[a] "vested right" is limited to the right to complete development or construction without complying with subsequently enacted laws, while estoppel is the broader preclusion of a party, including a government agency, from acting counter to its previous conduct or

commitments." Id. at p. 725. Even approval of a final map or a parcel map does not in itself confer a vested right to develop. Id. at p. 739-794.

Avco Community Developers, Inc. owned 7,936 acres in Orange County, California. In 1971, at Avco's request, the county rezoned 5,234 acres as a "planned community development." In 1972 Avco received a final map and rough grading permits for 27 parcels on 74 acres of the project.

In November 1972 California voters approved the Coastal Zone Conservation Act.[1] Effective February 1, 1973, under this Act any person wishing to perform any development within the coastal zone was required to obtain a permit from the Coastal Zone Commission. By February 1, 1973 Avco had prepared numerous studies and completed, or was in the process of constructing, storm drains, culverts, street improvements, utilities, and similar facilities for both its first 74 acre development and for the remainder of its development. Avco had spent over $2 million, incurred over $740,000 in liabilities, and was losing over $7,000 a day on development of the tract.

However, Avco had not submitted building plans, obtained any building permits, or started actual construction on any structures in its first 74 acre development. Further, Avco had not finished the rough grading and, under the county code, could not obtain building permits until this grading was completed.

Avco applied to the Coastal Commission for an exemption from the new permit requirement, claiming it had a vested right to complete development. The Coastal Commission refused to issue an exemption, Avco sued, and the California Supreme Court held that, *without a permit, Avco had no vested right to complete development.* (emphasis added) The Court did establish an exception to the building permit requirement in cases where the developer had obtained the "functional equivalent" of a building permit, such as a conditional use permit. The Court also held that an illegal or expired permit could not be relied upon.

The California Supreme Court reviewed prior cases while deciding Avco. In a 1966 case, Spindler Realty Corp v. Monning (1966) 243 Cal.App.2d 255 [53 Cal.Rptr.7], a developer obtained a grading permit, spent $300,000 in development costs, and submitted plans for a high-rise apartment. The property was then rezoned to single family residences before the building plans were approved. The Court of Appeal held that the developer had a vested right to finish the grading under its permit, but, because the

[1] The California Coastal Act of 1976 was the successor to this 1972 Coastal Zone Conservation Act.

grading permit did not specify the number, size, and type of buildings to be constructed, the developer had no vested right to build structures under the old zoning.

In Anderson v. City Council (1964) 229 Cal.App.2d 79 [40 Cal.Rptr.41], developers relied on the assurances of city officials and spent money on development costs, prior to applying for a building permit. The Court of Appeal held that the developer could not have acted in justifiable reliance on a building permit, because the developer's acts all occurred before the building permit issued.

In the present case, the developer is asking the Coastal Commission to allow development according to decades-old laws and ordinances and laws, instead of under current laws and ordinances. As the California Supreme Court stated in Avco, "Even tracts or lots in tracts which were subdivided decades ago, but upon which no buildings were constructed, cannot be free of current zoning and regulation." Avco, *supra*, at p. 798.

Thus, the current law regarding common law vested rights for development of land has been established for more than 30 years and is well-defined. The assertions in the letters submitted by the developer should be disregarded by the Coastal Commission as contrary to the controlling precedent cases.

2. VESTED RIGHTS CAN ONLY BE OBTAINED IN THREE WAYS, AND THE DEVELOPER HAS NOT MET ANY OF THESE THREE CRITERIA.

There are three ways to obtain vested rights, the right to proceed with construction despite an intervening change in the law. To allow the developer to claim vested rights from the distant past would create an indefinite exemption to all future zoning laws, impairing government rights to control land use policy.

The first way to obtain vested rights is under the common law Avco holding, by permit. The developers have no permit, so they cannot claim vested rights under the common law doctrine.

The second way to obtain vested rights is for the developer and the city or county to negotiate a written agreement, to insulate the developer from future government actions. A development agreement must state the duration of the agreement, which can last 10 to 15 years. There is no development agreement, so the developer cannot claim vested rights under this method.

The third way to obtain vested rights is to record a "Vesting Tentative Map" under Government Code §66498 *et seq.*, enacted in 1984. This "Vesting Tentative Map" must be titled as such, and be in substantial compliance with ordinances, policies, and standards in effect at the time the application for approval of the "Vesting Tentative Map" is complete. The city or county must make a specific decision that the "Vesting Tentative Map" complies with the general plan. If properly recorded, the development will be grandfathered in. However, the developer has no recorded "Vesting Tentative Map," so it cannot claim vested rights by this method.

The developer has not met the requirements of any of the three ways to obtain vested rights, and thus has no vested rights to develop the land.

Further, "[T]here can be no vested rights without the required coastal development permits." Oceanic Cal., Inc. v. North Central Coast Regional Commission (1976) 63 Cal.App.3d 279, 286-87. General approval from the county is not enough. The developer must comply with all laws in effect at the time the building permit issued. An owner of undeveloped land also has no vested right in existing zoning, more valuable zoning, or zoning for highest and best use of the property, and there are no vested rights if the city or county issues a building permit that is invalid, such as when a permit is not in compliance with state law.

Finally, vested rights last only one to two years. The present project was started almost 50 years ago, so any understandings or verbal agreements have long since expired and cannot be used to claim vested rights now.

Thus, the developers have essentially no facts to support a claim of vested rights under current California law. The prior owners and developers obtained no grading or building permits, and no conditional use permits. They performed only un-permitted rough grading, but did not install any utilities, roads, storm drains, or other improvements.

Also, the developer cannot argue estoppel against the city or county. In City of Glendale v. Superior Court (1993) 18 Cal.App.4th 1768, 1781 [23 Cal.Rptr.2d 305], the Court of Appeal held that "estoppel will be applied to government agencies only when "justice and right require it," and it will not be applied if it would "nullify a strong rule of public policy adopted for the benefit of the public."

//

However, in the present case there were no previous commitments by the government to allow building, as no permits were ever issued. There was no conduct by officials of either the County of Orange or the City of Laguna Beach that would lead a reasonable person to believe that development would be permitted, and to justifiably rely on such conduct. Thus, there is no viable argument for estoppel.

Thus, any future development must be in accord with the laws in effect at the time the improvements are made

3. THE DEVELOPER HAS THE BURDEN OF PROOF TO SHOW VALID PERMITS, AND NO PERMITS HAVE BEEN LOCATED OR PRODUCED

Since 1909 the State of California has had at least some oversight for housing, schools, hospitals, and state buildings. Grading and changing topography was more likely to be subject to local control and enforcement. Ultra-hazardous activities such as blasting would almost certainly have required a state permit, from the California Bureau of Land Management or its agency the Bureau of Mines.[2]

Permits for construction have been required for more than 100 years, both for safety and as a source of revenue for local governments, as shown by Exhibit A, excerpts from the 1927 Uniform Building Code; Exhibit B, Health and Safety Code §19120, enacted in 1939 and requiring enforcement of building codes; Exhibit C, Health and Safety Code §19130-19133, enacted in 1941, requiring building permits, plans, specifications, and fees; Exhibit D, the 1959 Building Standards; and Exhibit E, the current building standards from the 2001 California Building Code. The history of the California Building Standards Commission is attached hereto as Exhibit F and incorporated by reference as if fully set forth herein.

The developer appears to claim that permits were granted, then lost or misplaced. A search of the Orange County records and the City of Laguna Beach records produced no permits for any construction activities for the land. The developer now has the burden of proof to produce valid permits, to rebut the fact that no permits are on file for the land. Further, even if a permit for grading had been found, it would likely cover only grading activities, not construction, as no tentative map or application for building was

[2] Telephone conversation with Michael Nearman, California Building Standards Commission, on April 8, 2008.

filed. And, this alleged permit would have expired a year or two after construction activity stopped in 1962.

Further, state law requires a special, additional permit from the Bureau of Mines for any blasting, which is an ultra-hazardous activity. Blasting was almost certainly performed during the grading in the 1960's, as indicated by the sheer cliffs created and the fact that the grading was into bedrock that could not have been moved only by bulldozers. There is no record of any blasting permit from the Bureau of Mines.

B. THE COASTAL COMMISSION HAS THE AUTHORITY TO REGULATE DEVELOPMENT WITHIN ITS REGION

The California Coastal Commission was created in 1976, and has the ability to regulate land within its jurisdiction according to state law. State law preempts county and municipal ordinances. "A city or county, including charter cities, may not lawfully authorize or prohibit a use of land in the coastal zone in a way that is inconsistent with a local coastal program or land use plan certified by the Coastal Commission." 70 Ops. Cal. Atty Gen 220 (1987).

This development is also subject to the California Environmental Quality Act, Public Resources Code §21000-21177, with its associated requirements for Environmental Impact Reports.

"A public agency has authority to disapprove a project due to environmental problems even though that authority might not be expressly stated in the enabling legislation for the agency." 14 Cal. Code Regs 15042; San Diego Trust and Savings Bank v. Friends of Gill (1981) 121 Cal.App.3d 203 [174 Cal.Rptr. 784].

Further, this land may be too steep for safe development, as indicated by the ongoing erosion that requires permanent sandbagging.

Thus, the Coastal Commission has the authority and the mandate to prohibit any development, and maintain the land in its natural state, to protect the public interests.

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C. THE EARLIER GRADING WAS DONE WITHOUT PERMITS, AND IS THUS ILLEGAL

The grading violates state law and is thus illegal, because the developer did not obtain any grading permits and the grading was more than 50 cubic yards.

State zoning law sets forth the minimum standards to be observed. The California Building Standards Commission sets the requirements for the entire state. If a city or county did not adopt stricter standards. the Uniform Building Code governed the construction. Even in the 1927 edition, the Uniform Building Code required permits for construction.

Currently, the California Building code, Appendix Chapter 33, Section 106.1 requires permits. "Except as specified in Section 106.2, no building or structure regulated by this code shall be erected, constructed, enlarged, altered, repaired, moved, improved, removed, converted, or demolished unless a separate permit for each building or structure has first been obtained from the building official." The exceptions include accessory buildings, fences, water tanks less than 5,000 gallons, temporary theatre sets, retaining walls less than 4 feet, window awnings, prefabricated swimming pools, oil derricks, and finish work.

Thus, a building permit requires an application, submitted documents, and plans, and may be reviewed by other officials, such as Health and Safety and the Fire Marshall. Fees must be paid before a permit is issued. The permit expires if work is not commenced within 180 days (6 months). The city or county may require a plan review, with additional fees up to 65% of the building permit fee.

Further, Section 108.1 requires inspections. "All construction or work for which a permit is required shall be subject to inspection by the building official. All such work or construction shall remain accessible and exposed for inspection purposes until approved by the building official." An inspection record card must be kept at the construction site.

Appendix Chapter 33 covers excavation and grading. Section 3309.1 states ". . . no person shall do any grading without first obtaining a grading permit from the building official. A separate permit shall be obtained for each site, and may cover both excavations and fills." Fill is limited to 50 cubic yards on any one lot. The application must state the quantities of work involved.

Section 3309.3 provides that ". . . grading over 5,000 cubic yards shall be performed in accordance with an approved grading plan prepared by a civil engineer, and shall be designated as

"engineered grading." Engineered grading requires 2 sets of plans and specifications, and supporting data consisting of a soils engineering report and engineering geology report. Soil investigation reports are also required by Government Code §66490 and §66491.

In the present case, the un-permitted and un-inspected grading appears to have been inadequate to support construction, because sandbagging has been necessary to prevent erosion.

The developer should not be permitted to benefit from the wrongdoing of its predecessors.

Conclusion

Under current California law, the developer has no vested rights to develop the property, and its contentions that it does have vested rights should be disregarded.

Date: April 8, 2008

LAW OFFICE OF BETTY C. CARRIE TEASDALE

Betty C. Carrie Teasdale, Esq.,

EXHIBIT A

BUILDING STANDARDS

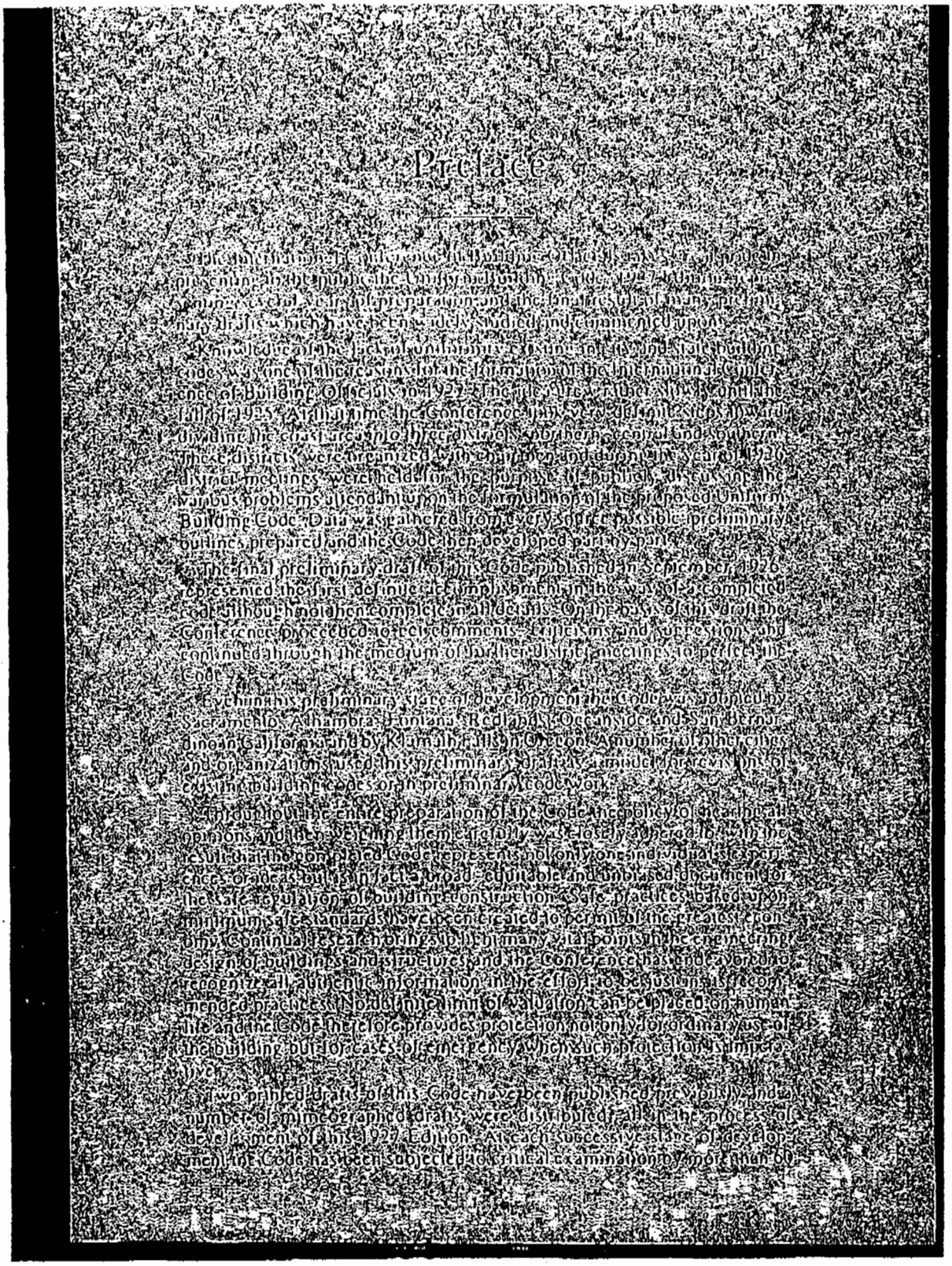
UNIFORM BUILDING CODE

1927 Edition

PREPARED BY

International Conference of Building Officials

International Conference of Building Officials
19 Pine Avenue
LONG BEACH, CALIFORNIA



Preface

Latham & Watkins Ltr 10/9/08 Re: Procedural Concerns

PART I

ADMINISTRATIVE

CHAPTER 1 — TITLE AND SCOPE

Title

Sec. 101. This Ordinance shall be known as the "1927 Edition of the International Conference of Building Officials Uniform Building Code," may be cited as such and will be referred to in this Ordinance as "this Code."

Purpose

Sec. 102. The purpose of this Code is to provide certain minimum standards, provisions and requirements for safe and stable design, methods of construction and uses of materials in buildings and/or structures hereafter erected, constructed, enlarged, altered, repaired, moved, converted to other uses or demolished and to regulate the equipment, maintenance, use and occupancy of all buildings and/or structures.

The provisions of this Code shall be deemed to supplement any and all state laws of the State of ..... relating to buildings.

Scope

Sec. 103. New buildings and/or structures hereafter erected in the City of ..... shall conform to all requirements of this Code, and all requirements in this Code, unless specifically provided, shall apply to new buildings.

Additions, alterations, repairs, and changes of use or occupancy in all buildings shall comply with the requirements specified in Section 104 of this Code.

Application to Existing Buildings

Sec. 104. The following specified requirements shall apply to existing buildings which for any reason whatsoever do not conform to the requirements of this Code for new buildings:

Major Alterations and Repairs

(a) If alterations and/or repairs in excess of fifty (50) per cent of the value of an existing building are made to any existing building within any period of twelve months, the entire building shall be made to conform with the requirements given herein for new buildings; provided, however, that any existing building which for any reason whatsoever, requires repairs, at any one time, in excess of fifty (50) per cent of the value thereof, not deducting from such value any loss caused by fire or any other reason, shall be made to conform to the requirements of this Code for new buildings or shall be entirely demolished.

Changed Use

(b) If the existing use or occupancy of an existing building is changed to a use or occupancy which would not be permitted in a similar building hereafter erected, the entire building shall be made to conform with the requirements given herein for new buildings; provided, however, that if the use or occupancy of only a portion or portions of an existing building is changed and such portion or portions are segregated as specified in Section

503 of this Code then only such portion or portions of the building need be made to comply with said requirements; and provided, further, that the Building Inspector is hereby given authority to approve any change in the use or occupancy of any existing building within any one Group of Occupancy as specified in Part III, even though such building is not made to fully conform to the requirements of this Code, when it is obvious that such a change in the use or occupancy of the existing building will not extend or increase any existing nonconformity or hazard of the building.

Additions

(c) Any existing building not covered by the preceding paragraphs (a) and (b) which has its floor area or its number of stories increased or its use or occupancy changed in any way from its former or existing use or occupancy shall be provided with stairways, emergency exits and fire protection facilities as specified in this Code for buildings hereafter erected for similar uses or occupancies.

Minor Alterations and Repairs

(d) Every alteration or repair to any structural part or portion of an existing building shall when deemed necessary in the opinion of the Building Inspector be made to conform to the requirements of this Code for new buildings. Minor alterations, repairs and changes not covered by the preceding paragraphs (a), (b) and (c) may be made with the same materials of which the building is constructed; provided, that not more than twenty-five (25) per cent of the roof covering of any building shall be replaced in any period of twelve (12) months unless the entire roof covering is made to conform with the requirements of this Code for new buildings.

New roofing meeting the requirements of this Code may be placed over existing roofings when the existing roofing and roof framing is such as to permit the new roofing to be properly supported and securely fastened.

Maintenance

Sec. 105. The requirements contained in this Code, covering the maintenance of buildings, shall apply to all buildings and/or structures now existing or hereafter erected. All buildings and/or structures and all parts thereof shall be maintained in a safe condition, and all devices or safeguards which are required by this Code in the erection, alteration or repair of any building shall be maintained in good working order.

This section shall not be construed as permitting the removal or non-maintenance of any existing devices or safeguards unless authorized in writing by the Building Inspector.

writing or stamp both sets of plans and specifications "Approved." One

CHAPTER 2 — GENERAL PROVISIONS

Application for Permit

Sec. 201. No person shall erect or construct any building or structure, nor add to, enlarge, move, improve, alter, convert, extend or demolish any building or structure, or cause the same to be done, without first obtaining a building permit therefor from the Building Inspector.

Any person desiring a building permit as required by this Code shall file with the Building Inspector an application therefor in writing on a blank form to be furnished for that purpose.

Every such application for a permit shall describe the land upon which the proposed building or work is to be done, either by lot, block and tract, or similar general description that will readily identify and definitely locate the proposed building or work.

Every such application shall show the use or occupancy of all parts of the building and such other reasonable information as may be required by the Building Inspector.

Copies of plans and specifications and a lot plan showing the location of the proposed building and of every existing building thereon, shall accompany every application for a permit, and shall be filed in duplicate with the Building Inspector; provided, however, that the Building Inspector may authorize the issuance of a permit without plans or specifications for small or unimportant work.

Plans shall be drawn to scale upon substantial paper or cloth and the essential parts shall be drawn to a scale of not less than one-eighth inch to one foot.

Plans and specifications shall be of sufficient clarity to indicate the nature and character of the work proposed and to show that the law will be complied with. Computations, strain sheets, stress diagrams and other data necessary to show the correctness of the plans, shall accompany the plans and specifications when required by the Building Inspector.

Any specifications in which general expressions are used to the effect that "work shall be done in accordance with the Building Code" or "to the satisfaction of the Building Inspector" shall be deemed imperfect and incomplete and every reference to this Code shall be to the section or subsection applicable to the material to be used or to the method of construction proposed.

All plans shall bear the name of the Architect, Structural Engineer or Designer. (See Appendix).

Building Permits

Sec. 202. The application, plans and specifications filed by an applicant for a permit shall be checked by the Building Inspector and if found to be in conformity with the requirements of this Code and all other laws or ordinances applicable thereto, the Building Inspector shall, upon receipt of the required fee, issue a permit therefor.

When the Building Inspector issues the permit he shall endorse in writing or stamp both sets of plans and specifications "Approved." One

such approved set of plans and specifications shall be retained by the Building Inspector as a public record, and one such approved set of plans and specifications shall be returned to the applicant, which set shall be kept on such building or work at all times during which the work authorized thereby is in progress and shall be open to inspection by public officials. Such approved plans and specifications shall not be changed, modified or altered without permission from the Building Inspector.

Fees

Sec. 203. Any person desiring a building permit shall, at the time of filing an application therefor, as provided in Sec. 201 of this Code, pay to the ..... a fee as required in this section (See Appendix).

For a total valuation of $50.00 or less no fee.

For a total valuation from $50.00 to $1,001 a $2.00 fee.

An additional fee of $2.00 for each additional $1000 or fraction thereof of total valuation to and including $15,000.

An additional fee of $1.00 for each additional $1000 or fraction thereof of total valuation to and including $50,000.

An aditional fee of 50¢ for each aditional $1000 or fraction thereof of total valuation exceeding $50,000.

The City of ..... the County of ..... the State of ....., and the United States of America, shall be exempted from the paying of any fee for any building permit.

Where work for which a permit is required by this Code is started or proceeded with prior to obtaining said permit, the fees above specified shall be doubled, but the payment of such double fee shall not relieve any persons from fully complying with the requirements of this Code in the execution of the work nor from any other penalties prescribed herein.

The Building Inspector shall keep a permanent, accurate account of all fees collected and received under this Code and give the name of the persons upon whose account the same were paid, the date and amount thereof, together with the location of the building or premises to which they relate.

Inspection and Registered Inspectors

Sec. 204. The Building Inspector shall inspect or cause to be inspected at various intervals during the erection, construction, enlarging, alteration, repairing, moving, demolition, conversion, occupancy and underpinning all buildings and/or structures referred to in this Code and located in the City of ..... and a final inspection shall be made of every building and/or structure hereafter erected prior to the issuance of the Certificate of Occupancy as specified in Sec. 206.

No building, construction, alteration, repair or demolition requiring a building permit shall be commenced until the permit holder or his agent shall have posted the building permit card in a conspicuous place on the front premises and in such position as to permit the Building Inspector to conveniently make the required entries thereon respecting inspection of the

work. This permit card shall be maintained in such position by the permit holder until the Certificate of Occupancy has been issued by the Building Inspector.

The Building Inspector upon notification from the permit holder or his agent shall make the following inspections of Type V buildings and shall either approve that portion of the construction as completed or shall notify the permit holder or his agent wherein the same fails to comply with the law.

Foundation Inspection: To be made after trenches are excavated, and the necessary forms erected and when all materials for the foundation are delivered on the job.

Frame Inspection: To be made after the roof, all framing, fire blocking and bracing is in place and all pipes, chimneys and vents are complete.

Stucco Inspection: To be made after all lathing and backing is in place and all plastering and stucco materials are delivered on the job, but before any stucco is applied.

Final Inspection: To be made after building is completed and is ready for occupancy.

No work shall be done on any part of the building and/or structure beyond the point indicated in each successive inspection without first obtaining the written approval of the Building Inspector. Such a written approval shall be given only after an inspection shall have been made of each successive step in the construction as indicated by each of the aforementioned four inspections. (See Appendix).

No reinforcing steel or structural framework of any part of any building or structure shall be covered or concealed in any manner whatsoever without first obtaining the approval of the Building Inspector.

In all buildings where plaster is used for fire protection purposes the permit holder or his agent shall notify the Building Inspector after all lathing and backing is in place and all plastering materials are delivered on the job and no plaster shall be applied until the approval of the Building Inspector has been received.

Special Engineering Supervision

Any person engaged in the erection or causing the erection of a building and/or structure, except Type V Buildings and/or structures, where the estimated cost exceeds $20,000 shall employ a "registered inspector" properly qualified as specified in this section or shall cause his employment by the architect, structural engineer or designer of such structure; provided, that the Building Inspector may authorize the proposed construction without requiring a "registered inspector" when in his estimation such special supervision is not necessary. The Building Inspector may designate any building and/or structure as requiring a "registered inspector" when deemed necessary or where there is a complicated design or where new materials or methods of construction are intended to be used.

The "registered inspector" shall be approved by, registered with, deputized by and assigned to a particular building or structure by the Building Inspector. Such "registered inspector" shall be thoroughly qualified by

PART VII
DETAILED REGULATIONS

CHAPTER 28

EXCAVATIONS, FOOTINGS AND FOUNDATIONS

PART VII

DETAILED REGULATIONS

CHAPTER 28 — EXCAVATIONS, FOOTINGS AND FOUNDATIONS

Excavations

Sec. 2801. All excavations for buildings and excavations accessory thereto shall be protected and guarded against danger to life and property. All permanent excavations shall have retaining walls of masonry or reinforced concrete of sufficient strength to retain the embankment together with any surcharged loads. No excavation for any purpose shall extend within one (1) foot of the angle of repose or natural slope of the soil under any footing or foundation, unless such footing or foundation is first properly underpinned or protected against settlement.

Any person causing an excavation to be made on his own property, to a depth of twelve (12) feet, or less, below the grade, shall protect the excavation so that the soil of adjoining property will not cave in or settle, but shall not be liable for the expense of underpinning or extending the foundation of buildings on adjoining properties where his excavation is not in excess of twelve (12) feet in depth. Before commencing the excavation the owner shall notify in writing the owners of adjoining buildings not less than ten (10) days before such excavation is to be made that the excavation is to be made and that the adjoining buildings should be protected. The owners of the adjoining properties shall be given access to the excavation for the purpose of protecting such adjoining buildings.

Any person causing an excavation to be made exceeding twelve (12) feet in depth below the grade, shall protect the excavation so that the adjoining soil will not cave in or settle, and shall extend the foundation of any adjoining buildings below the depth of twelve (12) feet below grade at his own expense. The owner of the adjoining buildings shall extend the foundations of his building to a depth of twelve (12) feet below grade at his own expense as provided in the preceding paragraph.

Footings and Foundations

Sec. 2802. Footings and foundations, unless specifically provided, shall be constructed of masonry or reinforced concrete and shall in all cases extend below the frost line. Masonry units used in foundation walls and footings shall be laid up in Portland cement mortar. The base areas of all footings and foundations shall be proportioned as specified in Section 2306.

Footings shall be so designed that the allowable bearing capacity of the soil in tons per square foot as given below shall not be exceeded unless the particular soil on which the building is to be placed shows a greater bearing capacity than that specified in this Section.

Rock	Not more than twenty per cent (20%) of the ultimate crushing strength of such rock.

EXHIBIT B

HEALTH AND SAFETY CODE – ENACTED IN 1939

19120. The building department of every city and city and county shall enforce this chapter within the city or city and county. "Building department" means the department, bureau, or officer charged with the enforcement of laws or ordinances regulating the erection, construction, or alteration of buildings.

EXHIBIT C

HEALTH AND SAFETY CODES – ENACTED IN 1941

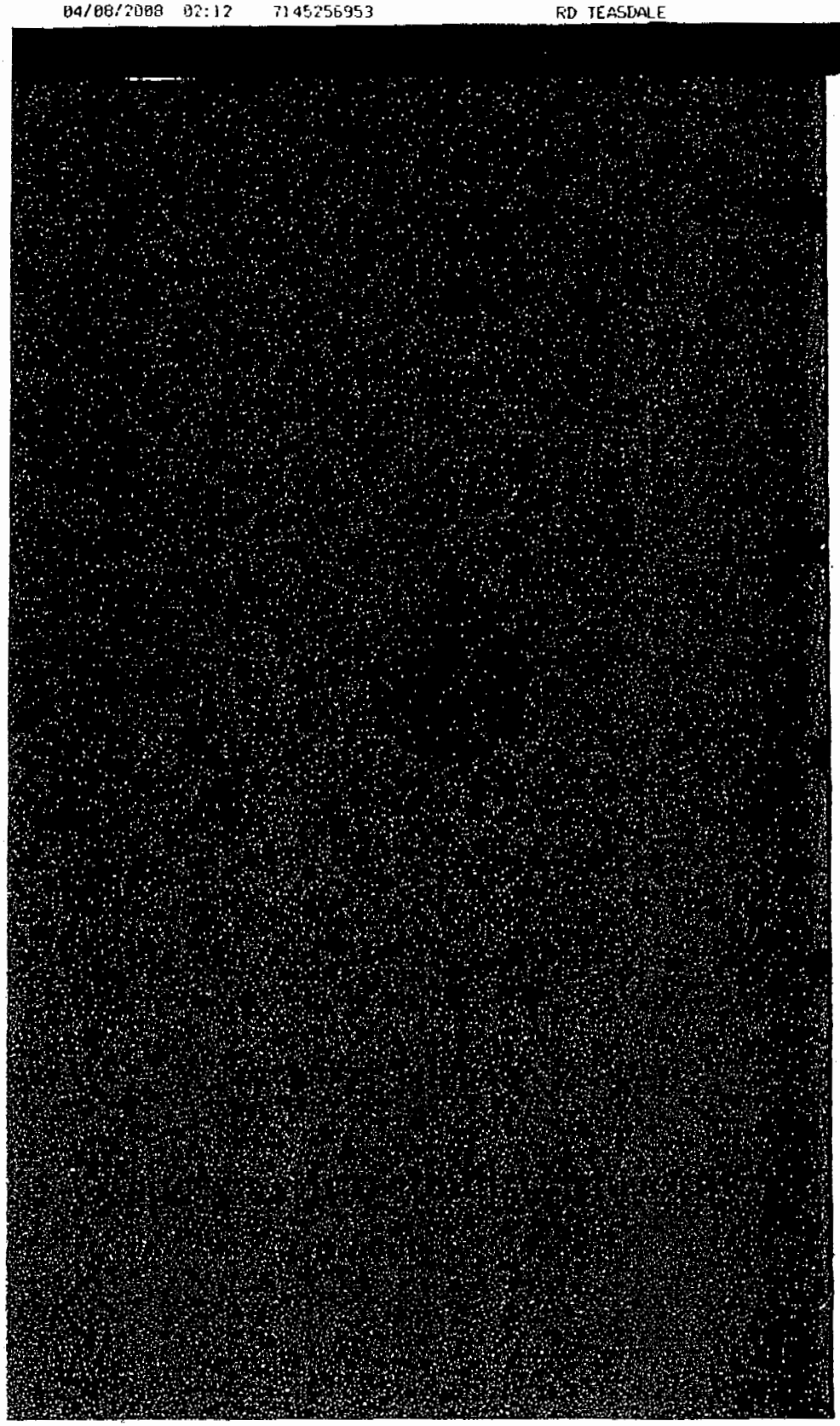
19130. No person shall construct a building subject to this chapter unless he has obtained a written permit for that purpose from the appropriate enforcement agency.

19131. Any person desiring a permit shall file an application therefore with the appropriate enforcement agency, which application shall contain:
(a) The name and address of the applicant.
(b) A detailed written statement of the work to be done.

19132. The applicant shall file with his application:
(a) A complete set of the plans of the work proposed.
(b) A set of specifications describing the materials to be used in the work.
(c) The fee prescribed for filing an application for a building permit.

19133. The enforcement agency shall examine the application, plans, and specifications filed with it by an applicant, and if it appears that the work to be done will not result in a violation of this chapter, shall approve them and issue a permit to the applicant.

EXHIBIT D



TITLE 24. BUILDING STANDARDS

GENERAL PREFACE

Suggestions. Constructive criticism of Title 24 of the California Administrative Code Index is invited to the end that it be made as responsive as possible to the needs of users. Address suggestions to the State Building Standards Commission, 1025 "P" Street, Sacramento 14, California. Possible omissions of any building regulation does not constitute disapproval, amendment or deletion of any existing building regulation.

HOW TO CITE

Cite by title number and section number. *Example:* Title 24, California Administrative Code, Section 14. (Short form: 24 Cal. Adm. Code 14).

Do this even when citing material which appears in a register since material in a register is integrated into the code. You may, however, refer to a particular issue of a register.

HOW TO USE

The instructions which follow are meant to be helpful in the use of this index and code.

Anyone designing, constructing, altering, moving, or repairing a structure, where state building standards are involved, should consult this index and code. All effective state regulations containing (or related to or constituting) building standards as of July 30, 1959, are referred to herein.

For a quick reference, Title 24 of the California Administrative Code has ten (10) occupancy tables in Chapter 2, Subchapter 1, Article 1, which give references to the detailed regulations or statutes.

After determining the occupancy group in which the building fits, you should determine the type of construction required. If local fire zones are involved, consult your local fire zone requirements.

The Alphabetical Index in Chapter 2, Subchapter 2, is an index of all effective state regulations containing (or related to or constituting) building standards of state agencies, statutory codes, and general laws as of July 30, 1959. Where possible the code sections are also cross-indexed to appropriate sections in the California Administrative Code.

Compiled by

HARRY A. COBORN
Senior Building Code Analyst

STATE BUILDING STANDARDS COMMISSION
Health and Safety Code (Secs. 18900-18911)

State Building Standards Commission

Members

18900. There is in the Department of Public Works a State Building Standards Commission consisting of the Director of Public Works, who shall be the chairman; three members to be appointed by and serve at the pleasure of the Governor from among the professions and industries concerned with building construction, of whom one shall be an architect, one a structural engineer and one a contractor; and three members to be appointed by and serve at the pleasure of the Governor from among local government officials. The commission shall elect a vice chairman annually from among its members.
(Added by Stats. 1953, Ch. 1500; amended by Stats. 1959, Ch. 1807.)

Regulations

18901. The commission shall adopt, amend and publish a single code of all administrative regulations of state agencies relating to building standards, which code may include, amend and publish therein portions of said administrative regulations or of applicable building codes by means of reference.
The commission may publish an index and reference guide to the administrative regulations and statutes relating to building standards. The publication of such index and reference guide shall not nullify nor supersede any existing regulation legally adopted by any state agency.
(Added by Stats. 1953, Ch. 1500; amended by Stats. 1955, Ch. 1715; amended by Stats. 1959, Ch. 485.)

Approval

18902. Every state officer and employee authorized by law to adopt any rule or regulation relating to or repealing building standards shall do so only through and with the approval of the commission.
(Added by Stats. 1953, Ch. 1500; amended by Stats. 1959, Ch. 485.)

Intent

18903. It is the purpose of this part to provide the means for eliminating duplication, conflict and overlapping in state building regulations and act to substitute the commission for the responsibilities now vested by law in various state agencies. To that end each state agency concerned shall continue to prepare such building regulations as it is authorized and finds necessary, but such regulations shall not be effective until approved by the commission.
(Added by Stats. 1953, Ch. 1500; amended by Stats. 1959, Ch. 485.)

Denial of Approval

18904. The commission may withhold approval and require change in any proposed regulation only if it finds duplication, conflict or overlapping between proposed and existing regulations, or when the nomenclature or arrangement does not conform to that adopted by the commission. The commission shall not require any substantive change unless such change is necessary because of duplication, conflict, overlapping, nomenclature, or arrangement, nor may it withhold approval on substantive grounds alone. The commission may advise all other state agencies concerned with respect to existing as well as proposed regulations and may make recommendations to eliminate conflicts and to ensure consistency and uniformity of all statewide building standards.
(Added by Stats. 1953, Ch. 1500; amended by Stats. 1959, Ch. 485.)

Responsibility

18905. The responsibility for enforcing or supervising the enforcing of state building regulations shall remain as vested by law.
(Added by Stats. 1953, Ch. 1500; amended by Stats. 1959, Ch. 485.)

State Building Standards Code

18906. The commission in co-operation with all state agencies concerned, shall promulgate and publish a State Building Standards Code which shall, when completed and published, supersede all then existing regulations relating to building standards issued by individual state agencies. The code may contain references to

state laws relating to building standards. Thereafter the commission may approve and publish amendments to the code not oftener than once each 90 days, except that by three-fourths vote of all its members the commission may find that an emergency exists and may then adopt and publish amendments as needed.
(Added by Stats. 1953, Ch. 1500; amended by Stats. 1959, Ch. 485.)

18906.3. For the purpose of this part the term "building standard" means any adopted state administrative regulation pertaining to the construction, alteration or improvement of a "building" as defined in Section 18906.4.
(Added by Stats. 1959, Ch. 486.)

18906.4. For the purpose of this part "building" means any structure as to which state agencies have regulatory power, built for support, shelter, housing or enclosure of persons, animals, chattels, equipment, or property of any kind, and also includes structures wherein things may be grown, made, produced, kept, handled, stored, or disposed of. All appendages, accessories, apparatus, appliances and equipment built in or installed as a part of a building or structure shall be deemed to be a part thereof, but "building" shall not include any tunnel, mine shaft, highway, or bridge, or include any house trailer or vehicle which conforms to the Vehicle Code.
(Added by Stats. 1959, Ch. 485.)

Compensation

18907. The members of the commission shall serve without compensation. Members of the commission who are not state officers shall be paid actual necessary travel expenses.
(Added by Stats. 1953, Ch. 1500; amended by Stats. 1959, Ch. 485.)

Publication

18908. The State Building Standards Code and all amendments and publications relating thereto shall be published in suitable looseleaf form and shall be made available to the public at a reasonable price. It shall be the duty of each state department concerned and of each city or county to have an up-to-date copy of the code available for public inspection. The code and its amendments shall be published by the Division of Administrative Procedure after approval by the commission.
(Added by Stats. 1953, Ch. 1500; amended by Stats. 1959, Ch. 485.)

Report

18909. The commission shall biennially submit a report of its activities, together with recommendations for legislation, to the Governor and the Legislature.
(Added by Stats. 1953, Ch. 1500.)

Meetings

18910. All meetings of the commission shall be open and public.
(Added by Stats. 1957, Ch. 2220.)

Records

18911. All records of the commission shall be open to inspection by the public during regular office hours.
(Added by Stats. 1957, Ch. 2220.)

TABLE OF ABBREVIATION REFERENCES TO CALIFORNIA CODES

Ag. Code	Agricultural Code
B. and P. Code	Business and Professions Code
Deering's Gen. Laws	Deering's California General Laws
Ed. Code	Education Code
Gov. Code	Government Code
H. and N. Code	Harbors and Navigation Code
H. and S. Code	Health and Safety Code
Lab. Code	Labor Code
Pen. Code	Penal Code
Pub. Res. Code	Public Resources Code
Pub. Util. Code	Public Utilities Code
W. and I. Code	Welfare and Institutions Code

CALIFORNIA ADMINISTRATIVE CODE

[1] No consecutive standards published.
[2] No rules published.
[3] Regulations of the State Social Welfare Board are not a part of the California Administrative Code, but are published separately.

TITLE 24. BUILDING STANDARDS

(Originally filed 9-16-59)

DETAILED ANALYSIS

CHAPTER 1. STATE BUILDING STANDARDS COMMISSION

SUBCHAPTER 1. GENERAL

Article 1. Adoption, Title, Scope, Basis and Administration

101. **Adoption.** Subchapter 1 of Chapter 1 of Title 24 of the California Administrative Code is adopted by the State Building Standards Commission under authority of Sections 18900 through 18911 of the State Health and Safety Code of the State of California. (Filed pursuant to Section 11380 of the Government Code.)

NOTE: Authority cited for Chapters 1 and 2 of Title 24: Sections 18900, 18901, 18902, 18903, 18904, 18905, 18906, 18906.3, 18906.4, 18907, 18908, 18909, 18910, and 18911, Health and Safety Code.

History: 1. Title 24 originally filed 9-16-59; effective thirtieth day thereafter.

102. **Title.** These regulations shall be known as the "Regulations of the State Building Standards Commission" and shall be cited as such and will be referred to herein as these regulations.

103. **Purpose.** These regulations have been prepared for the purpose of adopting a single code of all administrative regulations of state agencies pertaining to building standards according to law.

104. **Scope.** These regulations are intended to provide a single code of building standards that will eliminate duplication, overlapping or conflict in state building regulations, but not to substitute the State Building Standards Commission for the responsibility now vested by law in other state agencies.

105. **Authority.** The authority of the State Building Standards Commission is contained in Sections 18900 through 18911 of the Health and Safety Code.

EXHIBIT E

Appendix Chapter 33
EXCAVATION AND GRADING

SECTION 3304 — PURPOSE

The purpose of this appendix is to safeguard life, limb, property and the public welfare by regulating grading on private property.

SECTION 3305 — SCOPE

This appendix sets forth rules and regulations to control excavation, grading and earthwork construction, including fills and embankments; establishes the administrative procedure for issuance of permits; and provides for approval of plans and inspection of grading construction.

The standards listed below are recognized standards (see Sections 3503 and 3504).

1. Testing.
   - 1.1 ASTM D 1557, Moisture-density Relations of Soils and Soil Aggregate Mixtures
   - 1.2 ASTM D 1556, In Place Density of Soils by the Sand-Cone Method
   - 1.3 ASTM D 2167, In Place Density of Soils by the Rubber-Balloon Method
   - 1.4 ASTM D 2937, In Place Density of Soils by the Drive-Cylinder Method
   - 1.5 ASTM D 2922 and D 3017, In Place Moisture Content and Density of Soils by Nuclear Methods

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The following California section replaces the corresponding model code section for applications specified by law for the Department of Housing and Community Development and the Office of Statewide Health Planning and Development.

SECTION 3305a — SCOPE

[For HCD 1, OSHPD 1 & 2] This chapter sets forth rules and regulations to control excavation, grading and earthwork construction, including fills and embankments, and provides for approval of plans and inspection of grading construction.

SECTION 3306 — PERMITS REQUIRED

3306.1 Permits Required. Except as specified in Section 3306.2 of this section, no person shall do any grading without first having obtained a grading permit from the building official.

3306.2 Exempted Work. A grading permit is not required for the following:

1. When approved by the building official, grading in an isolated, self-contained area if there is no danger to private or public property.

2. An excavation below finished grade for basements and footings of a building, retaining wall or other structure authorized by a valid building permit. This shall not exempt any fill made with the material from such excavation or exempt any excavation having an unsupported height greater than 5 feet (1524 mm) after the completion of such structure.

3. Cemetery graves.

4. Refuse disposal sites controlled by other regulations.

5. Excavations for wells or tunnels or utilities.

6. Mining, quarrying, excavating, processing or stockpiling of rock, sand, gravel, aggregate or clay where established and provided for by law, provided such operations do not affect the lateral support or increase the stresses in or pressure upon any adjacent or contiguous property.

7. Exploratory excavations under the direction of soil engineers or engineering geologists.

8. An excavation that (1) is less than 2 feet (610 mm) in depth or (2) does not create a cut slope greater than 5 feet (1524 mm) in height and steeper than 1 unit vertical in $1^1/_2$ units horizontal (66.7% slope).

9. A fill less than 1 foot (305 mm) in depth and placed on natural terrain with a slope flatter than 1 unit vertical in 5 units horizontal (20% slope), or less than 3 feet (914 mm) in depth, not intended to support structures, that does not exceed 50 cubic yards ($38.3\ m^3$) on any one lot and does not obstruct a drainage course.

Exemption from the permit requirements of this chapter shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of this chapter or any other laws or ordinances of this jurisdiction.

SECTION 3307 — HAZARDS

Whenever the building official determines that any existing excavation or embankment or fill on private property has become a hazard to life and limb, or endangers property, or adversely affects the safety, use or stability of a public way or drainage channel, the owner of the property upon which the excavation or fill is located, or other person or agent in control of said property, upon receipt of notice in writing from the building official, shall within the period specified therein repair or eliminate such excavation or embankment to eliminate the hazard and to be in conformance with the requirements of this code.

SECTION 3308 — DEFINITIONS

For the purposes of this appendix, the definitions listed hereunder shall be construed as specified in this section.

APPROVAL shall mean that the proposed work or completed work conforms to this chapter in the opinion of the building official.

AS-GRADED is the extent of surface conditions on completion of grading.

BEDROCK is in-place solid rock.

BENCH is a relatively level step excavated into earth material on which fill is to be placed.

BORROW is earth material acquired from an off-site location for use in grading on a site.

CIVIL ENGINEER is a professional engineer registered in the state to practice in the field of civil works.

CIVIL ENGINEERING is the application of the knowledge of the forces of nature, principles of mechanics and the properties of materials to the evaluation, design and construction of civil works.

COMPACTION is the densification of a fill by mechanical means.

EARTH MATERIAL is any rock, natural soil or fill or any combination thereof.

ENGINEERING GEOLOGIST is a geologist experienced and knowledgeable in engineering geology.

ENGINEERING GEOLOGY is the application of geologic knowledge and principles in the investigation and evaluation of naturally occurring rock and soil for use in the design of civil works.

EROSION is the wearing away of the ground surface as a result of the movement of wind, water or ice.

EXCAVATION is the mechanical removal of earth material.

FILL is a deposit of earth material placed by artificial means.

GEOTECHNICAL ENGINEER. See "soils engineer."

GRADE is the vertical location of the ground surface.

Existing Grade is the grade prior to grading.

Finish Grade is the final grade of the site that conforms to the approved plan.

Rough Grade is the stage at which the grade approximately conforms to the approved plan.

GRADING is any excavating or filling or combination thereof.

KEY is a designed compacted fill placed in a trench excavated in earth material beneath the toe of a proposed fill slope.

PROFESSIONAL INSPECTION is the inspection required by this code to be performed by the civil engineer, soils engineer or engineering geologist. Such inspections include that performed by persons supervised by such engineers or geologists and shall be sufficient to form an opinion relating to the conduct of the work.

SITE is any lot or parcel of land or contiguous combination thereof, under the same ownership, where grading is performed or permitted.

SLOPE is an inclined ground surface the inclination of which is expressed as a ratio of horizontal distance to vertical distance.

SOIL is naturally occurring superficial deposits overlying bedrock.

SOILS ENGINEER (GEOTECHNICAL ENGINEER) is an engineer experienced and knowledgeable in the practice of soils engineering (geotechnical) engineering.

SOILS ENGINEERING (GEOTECHNICAL ENGINEERING) is the application of the principles of soils mechanics in the investigation, evaluation and design of civil works involving the use of earth materials and the inspection or testing of the construction thereof.

TERRACE is a relatively level step constructed in the face of a graded slope surface for drainage and maintenance purposes.

SECTION 3309 — GRADING PERMIT REQUIREMENTS

3309.1 Permits Required. Except as exempted in Section 3306 of this code, no person shall do any grading without first obtaining a grading permit from the building official. A separate permit shall be obtained for each site, and may cover both excavations and fills.

3309.2 Application. The provisions of Section 106.3.1 are applicable to grading. Additionally, the application shall state the estimated quantities of work involved.

3309.3 Grading Designation. Grading in excess of 5,000 cubic yards (3825 m^3) shall be performed in accordance with the approved grading plan prepared by a civil engineer, and shall be designated as "engineered grading." Grading involving less than 5,000 cubic yards (3825 m^3) shall be designated "regular grading" unless the permittee chooses to have the grading performed as engineered grading, or the building official determines that special conditions or unusual hazards exist, in which case grading shall conform to the requirements for engineered grading.

3309.4 Engineered Grading Requirements. Application for a grading permit shall be accompanied by two sets of plans and specifications, and supporting data consisting of a soils engineering report and engineering geology report. The plans and specifications shall be prepared and signed by an individual licensed by the state to prepare such plans or specifications when required by the building official.

Specifications shall contain information covering construction and material requirements.

Plans shall be drawn to scale upon substantial paper or cloth and shall be of sufficient clarity to indicate the nature and extent of the work proposed and show in detail that they will conform to the provisions of this code and all relevant laws, ordinances, rules and regulations. The first sheet of each set of plans shall give location of the work, the name and address of the owner, and the person by whom they were prepared.

The plans shall include the following information:

1. General vicinity of the proposed site.

2. Property limits and accurate contours of existing ground and details of terrain and area drainage.

3. Limiting dimensions, elevations or finish contours to be achieved by the grading, and proposed drainage channels and related construction.

4. Detailed plans of all surface and subsurface drainage devices, walls, cribbing, dams and other protective devices to be constructed with, or as a part of, the proposed work, together with a map showing the drainage area and the estimated runoff of the area served by any drains.

5. Location of any buildings or structures on the property where the work is to be performed and the location of any buildings or structures on land of adjacent owners that are within 15 feet (4572 mm) of the property or that may be affected by the proposed grading operations.

6. Recommendations included in the soils engineering report and the engineering geology report shall be incorporated in the grading plans or specifications. When approved by the building official, specific recommendations contained in the soils engineering report and the engineering geology report, which are applicable to grading, may be included by reference.

7. The dates of the soils engineering and engineering geology reports together with the names, addresses and phone numbers of the firms or individuals who prepared the reports.

3309.5 Soils Engineering Report. The soils engineering report required by Section 3309.4 shall include data regarding the nature, distribution and strength of existing soils, conclusions and recommendations for grading procedures and design criteria for corrective measures, including buttress fills, when necessary, and opinion on adequacy for the intended use of sites to be developed by the proposed grading as affected by soils engineering factors, including the stability of slopes.

3309.6 Engineering Geology Report. The engineering geology report required by Section 3309.4 shall include an adequate description of the geology of the site, conclusions and recommen-

dations regarding the effect of geologic conditions on the proposed development, and opinion on the adequacy for the intended use of sites to be developed by the proposed grading, as affected by geologic factors.

3309.7 Liquefaction Study. The building official may require a geotechnical investigation in accordance with Sections 1804.2 and 1804.5 when, during the course of an investigation, all of the following conditions are discovered, the report shall address the potential for liquefaction:

1. Shallow ground water, 50 feet (15 240 mm) or less.
2. Unconsolidated sandy alluvium.
3. Seismic Zones 3 and 4.

3309.8 Regular Grading Requirements. Each application for a grading permit shall be accompanied by a plan in sufficient clarity to indicate the nature and extent of the work. The plans shall give the location of the work, the name of the owner and the name of the person who prepared the plan. The plan shall include the following information:

1. General vicinity of the proposed site.
2. Limiting dimensions and depth of cut and fill.
3. Location of any buildings or structures where work is to be performed, and the location of any buildings or structures within 15 feet (4572 mm) of the proposed grading.

3309.9 Issuance. The provisions of Section 106.4 are applicable to grading permits. The building official may require that grading operations and project designs be modified if delays occur which incur weather-generated problems not considered at the time the permit was issued.

The building official may require professional inspection and testing by the soils engineer. When the building official has cause to believe that geologic factors may be involved, the grading will be required to conform to engineered grading.

SECTION 3310 — GRADING FEES

3310.1 General. Fees shall be assessed in accordance with the provisions of this section or shall be as set forth in the fee schedule adopted by the jurisdiction.

3310.2 Plan Review Fees. When a plan or other data are required to be submitted, a plan review fee shall be paid at the time of submitting plans and specifications for review. Said plan review fee shall be as set forth in Table A-33-A. Separate plan review fees shall apply to retaining walls or major drainage structures as required elsewhere in this code. For excavation and fill on the same site, the fee shall be based on the volume of excavation or fill, whichever is greater.

3310.3 Grading Permit Fees. A fee for each grading permit shall be paid to the building official as set forth in Table A-33-B. Separate permits and fees shall apply to retaining walls or major drainage structures as required elsewhere in this code. There shall be no separate charge for standard terrace drains and similar facilities.

TABLE A-33-A—GRADING PLAN REVIEW FEES

50 cubic yards (38.2 m^3) or less	No fee
51 to 100 cubic yards (40 m^3 to 76.5 m^3)	$23.50
101 to 1,000 cubic yards (77.2 m^3 to 764.6 m^3)	37.00
1,001 to 10,000 cubic yards (765.3 m^3 to 7645.5 m^3)	49.25
10,001 to 100,000 cubic yards (7646.3 m^3 to 76 455 m^3)—$49.25 for the first 10,000 cubic yards (7645.5 m^3), plus $24.50 for each additional 10,000 yards (7645.5 m^3) or fraction thereof.	
100,001 to 200,000 cubic yards (76 456 m^3 to 152 911 m^3)—$269.75 for the first 100,000 cubic yards (76 455 m^3), plus $13.25 for each additional 10,000 cubic yards (7645.5 m^3) or fraction thereof.	
200,001 cubic yards (152 912 m^3) or more—$402.25 for the first 200,000 cubic yards (152 911 m^3), plus $7.25 for each additional 10,000 cubic yards (7645.5 m^3) or fraction thereof.	
Other Fees: Additional plan review required by changes, additions or revisions to approved plans (minimum charge—one-half hour)	$50.50 per hour*

*Or the total hourly cost to the jurisdiction, whichever is the greatest. This cost shall include supervision, overhead, equipment, hourly wages and fringe benefits of the employees involved.

TABLE A-33-B—GRADING PERMIT FEES[1]

50 cubic yards (38.2 m^3) or less	$23.50
51 to 100 cubic yards (40 m^3 to 76.5 m^3)	37.00
101 to 1,000 cubic yards (77.2 m^3 to 764.6 m^3)—$37.00 for the first 100 cubic yards (76.5 m^3) plus $17.50 for each additional 100 cubic yards (76.5 m^3) or fraction thereof.	
1,001 to 10,000 cubic yards (765.3 m^3 to 7645.5 m^3)—$194.50 for the first 1,000 cubic yards (764.6 m^3), plus $14.50 for each additional 1,000 cubic yards (764.6 m^3) or fraction thereof.	
10,001 to 100,000 cubic yards (7646.3 m^3 to 76 455 m^3)—$325.00 for the first 10,000 cubic yards (7645.5 m^3), plus $66.00 for each additional 10,000 cubic yards (7645.5 m^3) or fraction thereof.	
100,001 cubic yards (76 456 m^3) or more—$919.00 for the first 100,000 cubic yards (76 455 m^3), plus $36.50 for each additional 10,000 cubic yards (7645.5 m^3) or fraction thereof.	
Other Inspections and Fees:	
1. Inspections outside of normal business hours (minimum charge—two hours)	$50.50 per hour[2]
2. Reinspection fees assessed under provisions of Section 108.8	$50.50 per hour[2]
3. Inspections for which no fee is specifically indicated (minimum charge—one-half hour)	$50.50 per hour[2]

[1]The fee for a grading permit authorizing additional work to that under a valid permit shall be the difference between the fee paid for the original permit and the fee shown for the entire project.

[2]Or the total hourly cost to the jurisdiction, whichever is the greatest. This cost shall include supervision, overhead, equipment, hourly wages and fringe benefits of the employees involved.

SECTION 3311 — BONDS

The building official may require bonds in such form and amounts as may be deemed necessary to ensure that the work, if not completed in accordance with the approved plans and specifications, will be corrected to eliminate hazardous conditions.

In lieu of a surety bond the applicant may file a cash bond or instrument of credit with the building official in an amount equal to that which would be required in the surety bond.

SECTION 3312 — CUTS

3312.1 General. Unless otherwise recommended in the approved soils engineering or engineering geology report, cuts shall conform to the provisions of this section.

In the absence of an approved soils engineering report, these provisions may be waived for minor cuts not intended to support structures.

3312.2 Slope. The slope of cut surfaces shall be no steeper than is safe for the intended use and shall be no steeper than 1 unit vertical in 2 units horizontal (50% slope) unless the permittee furnishes a soils engineering or an engineering geology report, or both, stating that the site has been investigated and giving an opinion that a cut at a steeper slope will be stable and not create a hazard to public or private property.

SECTION 3313 — FILLS

3313.1 General. Unless otherwise recommended in the approved soils engineering report, fills shall conform to the provisions of this section.

In the absence of an approved soils engineering report, these provisions may be waived for minor fills not intended to support structures.

3313.2 Preparation of Ground. Fill slopes shall not be constructed on natural slopes steeper than 1 unit vertical in 2 units horizontal (50% slope). The ground surface shall be prepared to receive fill by removing vegetation, noncomplying fill, topsoil and other unsuitable materials scarifying to provide a bond with the new fill and, where slopes are steeper than 1 unit vertical in 5 units horizontal (20% slope) and the height is greater than 5 feet (1524 mm), by benching into sound bedrock or other competent material as determined by the soils engineer. The bench under the toe of a fill on a slope steeper than 1 unit vertical in 5 units horizontal (20% slope) shall be at least 10 feet (3048 mm) wide. The area beyond the toe of fill shall be sloped for sheet overflow or a paved drain shall be provided. When fill is to be placed over a cut, the bench under the toe of fill shall be at least 10 feet (3048 mm) wide but the cut shall be made before placing the fill and acceptance by the soils engineer or engineering geologist or both as a suitable foundation for fill.

3313.3 Fill Material. Detrimental amounts of organic material shall not be permitted in fills. Except as permitted by the building official, no rock or similar irreducible material with a maximum dimension greater than 12 inches (305 mm) shall be buried or placed in fills.

EXCEPTION: The building official may permit placement of larger rock when the soils engineer properly devises a method of placement, and continuously inspects its placement and approves the fill stability. The following conditions shall also apply:

1. Prior to issuance of the grading permit, potential rock disposal areas shall be delineated on the grading plan.

2. Rock sizes greater than 12 inches (305 mm) in maximum dimension shall be 10 feet (3048 mm) or more below grade, measured vertically.

3. Rocks shall be placed so as to assure filling of all voids with well-graded soil.

3313.4 Compaction. All fills shall be compacted to a minimum of 90 percent of maximum density.

3313.5 Slope. The slope of fill surfaces shall be no steeper than is safe for the intended use. Fill slopes shall be no steeper than 1 unit vertical in 2 units horizontal (50% slope).

SECTION 3314 — SETBACKS

3314.1 General. Cut and fill slopes shall be set back from site boundaries in accordance with this section. Setback dimensions shall be horizontal distances measured perpendicular to the site

boundary. Setback dimensions shall be as shown in Figure A-33-1.

3314.2 Top of Cut Slope. The top of cut slopes shall not be made nearer to a site boundary line than one fifth of the vertical height of cut with a minimum of 2 feet (610 mm) and a maximum of 10 feet (3048 mm). The setback may need to be increased for any required interceptor drains.

3314.3 Toe of Fill Slope. The toe of fill slope shall be made not nearer to the site boundary line than one half the height of the slope with a minimum of 2 feet (610 mm) and a maximum of 20 feet (6096 mm). Where a fill slope is to be located near the site boundary and the adjacent off-site property is developed, special precautions shall be incorporated in the work as the building official deems necessary to protect the adjoining property from damage as a result of such grading. These precautions may include but are not limited to:

1. Additional setbacks.
2. Provision for retaining or slough walls.
3. Mechanical or chemical treatment of the fill slope surface to minimize erosion.
4. Provisions for the control of surface waters.

3314.4 Modification of Slope Location. The building official may approve alternate setbacks. The building official may require an investigation and recommendation by a qualified engineer or engineering geologist to demonstrate that the intent of this section has been satisfied.

SECTION 3315 — DRAINAGE AND TERRACING

3315.1 General. Unless otherwise indicated on the approved grading plan, drainage facilities and terracing shall conform to the provisions of this section for cut or fill slopes steeper than 1 unit vertical in 3 units horizontal (33.3% slope).

3315.2 Terrace. Terraces at least 6 feet (1829 mm) in width shall be established at not more than 30-foot (9144 mm) vertical intervals on all cut or fill slopes to control surface drainage and debris except that where only one terrace is required, it shall be at midheight. For cut or fill slopes greater than 60 feet (18 288 mm) and up to 120 feet (36 576 mm) in vertical height, one terrace at approximately midheight shall be 12 feet (3658 mm) in width. Terrace widths and spacing for cut and fill slopes greater than 120 feet (36 576 mm) in height shall be designed by the civil engineer and approved by the building official. Suitable access shall be provided to permit proper cleaning and maintenance.

Swales or ditches on terraces shall have a minimum gradient of 5 percent and must be paved with reinforced concrete not less than 3 inches (76 mm) in thickness or an approved equal paving. They shall have a minimum depth at the deepest point of 1 foot (305 mm) and a minimum paved width of 5 feet (1524 mm).

A single run of swale or ditch shall not collect runoff from a tributary area exceeding 13,500 square feet (1254.2 m^2) (projected) without discharging into a down drain.

3315.3 Subsurface Drainage. Cut and fill slopes shall be provided with subsurface drainage as necessary for stability.

3315.4 Disposal. All drainage facilities shall be designed to carry waters to the nearest practicable drainage way approved by the building official or other appropriate jurisdiction as a safe place to deposit such waters. Erosion of ground in the area of discharge shall be prevented by installation of nonerosive down-drains or other devices.

Building pads shall have a drainage gradient of 2 percent toward approved drainage facilities, unless waived by the building official.

EXCEPTION: The gradient from the building pad may be 1 percent if all of the following conditions exist throughout the permit area:

1. No proposed fills are greater than 10 feet (3048 mm) in maximum depth.
2. No proposed finish cut or fill slope faces have a vertical height in excess of 10 feet (3048 mm).
3. No existing slope faces steeper than 1 unit vertical in 10 units horizontal (10% slope) have a vertical height in excess of 10 feet (3048 mm).

3315.5 Interceptor Drains. Paved interceptor drains shall be installed along the top of all cut slopes where the tributary drainage area above slopes toward the cut and has a drainage path greater than 40 feet (12 192 mm) measured horizontally. Interceptor drains shall be paved with a minimum of 3 inches (76 mm) of concrete or gunite and reinforced. They shall have a minimum depth of 12 inches (305 mm) and a minimum paved width of 30 inches (762 mm) measured horizontally across the drain. The slope of drain shall be approved by the building official.

SECTION 3316 — EROSION CONTROL

3316.1 Slopes. The faces of cut and fill slopes shall be prepared and maintained to control against erosion. This control may consist of effective planting. The protection for the slopes shall be installed as soon as practicable and prior to calling for final approval. Where cut slopes are not subject to erosion due to the erosion-resistant character of the materials, such protection may be omitted.

3316.2 Other Devices. Where necessary, check dams, cribbing, riprap or other devices or methods shall be employed to control erosion and provide safety.

SECTION 3317 — GRADING INSPECTION

3317.1 General. Grading operations for which a permit is required shall be subject to inspection by the building official. Professional inspection of grading operations shall be provided by the civil engineer, soils engineer and the engineering geologist retained to provide such services in accordance with Section 3317.5 for engineered grading and as required by the building official for regular grading.

3317.2 Civil Engineer. The civil engineer shall provide professional inspection within such engineer's area of technical specialty, which shall consist of observation and review as to the establishment of line, grade and surface drainage of the development area. If revised plans are required during the course of the work they shall be prepared by the civil engineer.

3317.3 Soils Engineer. The soils engineer shall provide professional inspection within such engineer's area of technical specialty, which shall include observation during grading and testing for required compaction. The soils engineer shall provide sufficient observation during the preparation of the natural ground and placement and compaction of the fill to verify that such work is being performed in accordance with the conditions of the approved plan and the appropriate requirements of this chapter. Revised recommendations relating to conditions differing from the approved soils engineering and engineering geology reports shall be submitted to the permittee, the building official and the civil engineer.

3317.4 Engineering Geologist. The engineering geologist shall provide professional inspection within such engineer's area of technical specialty, which shall include professional inspection of

the bedrock excavation to determine if conditions encountered are in conformance with the approved report. Revised recommendations relating to conditions differing from the approved engineering geology report shall be submitted to the soils engineer.

3317.5 Permittee. The permittee shall be responsible for the work to be performed in accordance with the approved plans and specifications and in conformance with the provisions of this code, and the permittee shall engage consultants, if required, to provide professional inspections on a timely basis. The permittee shall act as a coordinator between the consultants, the contractor and the building official. In the event of changed conditions, the permittee shall be responsible for informing the building official of such change and shall provide revised plans for approval.

3317.6 Building Official. The building official shall inspect the project at the various stages of work requiring approval to determine that adequate control is being exercised by the professional consultants.

3317.7 Notification of Noncompliance. If, in the course of fulfilling their respective duties under this chapter, the civil engineer, the soils engineer or the engineering geologist finds that the work is not being done in conformance with this chapter or the approved grading plans, the discrepancies shall be reported immediately in writing to the permittee and to the building official.

3317.8 Transfer of Responsibility. If the civil engineer, the soils engineer, or the engineering geologist of record is changed during grading, the work shall be stopped until the replacement has agreed in writing to accept their responsibility within the area of technical competence for approval upon completion of the work. It shall be the duty of the permittee to notify the building official in writing of such change prior to the recommencement of such grading.

SECTION 3318 — COMPLETION OF WORK

3318.1 Final Reports. Upon completion of the rough grading work and at the final completion of the work, the following reports and drawings and supplements thereto are required for engineered grading or when professional inspection is performed for regular grading, as applicable.

1. An as-built grading plan prepared by the civil engineer retained to provide such services in accordance with Section 3317.5 showing original ground surface elevations, as-graded ground surface elevations, lot drainage patterns, and the locations and elevations of surface drainage facilities and of the outlets of subsurface drains. As-constructed locations, elevations and details of subsurface drains shall be shown as reported by the soils engineer.

Civil engineers shall state that to the best of their knowledge the work within their area of responsibility was done in accordance with the final approved grading plan.

2. A report prepared by the soils engineer retained to provide such services in accordance with Section 3317.3, including locations and elevations of field density tests, summaries of field and laboratory tests, other substantiating data, and comments on any changes made during grading and their effect on the recommendations made in the approved soils engineering investigation report. Soils engineers shall submit a statement that, to the best of their knowledge, the work within their area of responsibilities is in accordance with the approved soils engineering report and applicable provisions of this chapter.

3. A report prepared by the engineering geologist retained to provide such services in accordance with Section 3317.5, including a final description of the geology of the site and any new information disclosed during the grading and the effect of same on recommendations incorporated in the approved grading plan. Engineering geologists shall submit a statement that, to the best of their knowledge, the work within their area of responsibility is in accordance with the approved engineering geologist report and applicable provisions of this chapter.

4. The grading contractor shall submit in a form prescribed by the building official a statement of conformance to said as-built plan and the specifications.

3318.2 Notification of Completion. The permittee shall notify the building official when the grading operation is ready for final inspection. Final approval shall not be given until all work, including installation of all drainage facilities and their protective devices, and all erosion-control measures have been completed in accordance with the final approved grading plan, and the required reports have been submitted.

EXHIBIT F

History CALIFORNIA BUILDING STANDARDS COMMISSION

The following is a summary of key events related to building standards and the BSC. This history helps to explain the development of the current processes by which building standards are adopted, approved, published, used as design and construction requirements, and enforced.

1905
One of the earliest attempts to unify codes on the national level was the National Board of Fire Underwriters successfully promoting a "Recommended National Building Code."

1909
The first public building law enacted in California was called the State Tenement Housing Act.

1913
The State Division of Immigration and Housing and the State Division of Safety were created. Each had separate regulatory authority that established the unfortunate precedent of having different state departments responding individually to specific building problems that had statewide impacts.

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1927
The Pacific Coast Building Officials — now the International Conference of Building Officials (ICBO) — published the first Uniform Building Code (UBC). The ICBO family of Uniform Codes has been adopted by reference or has been used as a pattern by most local governments. The UBC established uniformity of building codes in California.

1933
The Field Act became law as a legislative response to the Long Beach earthquake. The Act assigned responsibility for the design and construction of public schools to the State Architect. This is an example of a separate regulatory authority adopting building standards in its own title - in this case, Title 21.

1949
House Resolution No. 183 established a panel to study the building code issue and report back to the Legislature. One of the comments in that report was:

> The state has no one agency concerned principally with building regulations. There are at least ten state agencies having some degree of authority in this field, and not one of them is responsible for taking the lead in coordinating the activity of all of them. This produces two kinds of confusion — conflict between state agencies themselves and too many kinds of relationships between state and local agencies. There is no consistent pattern for defining the relative responsibility of the state and local agencies in enforcing state regulations.

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1953
The initial State Building Standards Law was enacted (Chapter 1500, Statutes of 1953). As originally enacted, the law established a California Building Standards Commission with limited powers to control the building standards regulatory process. The Commission could not question the substantive provisions of the code if it found technical defects or that the provisions would have a negative impact on the public. Also, the Commission had no control over the filing of a building standard with the Secretary of State, and no appellant powers. Because of its limited powers to control the building standard regulatory process, the Commission was unsuccessful in its attempts to resolve longstanding problems that made it almost impossible for users of the code to understand and comply with its requirements.

Building standards continued to be buried in different titles of the California Administrative Code: OSHA in Title 8, Health in Title 17, Fire Marshal in Title 19, Hospitals in Title 22, etc. There was no codification or indexing, with standards scattered through the 30,000 plus pages of the California Administrative Code. Enforcement was

complicated, costly, and in some cases, nonexistent.

1957
The Senate Interim Committee on Governmental Organization reviewed building standards and reported:

> The handicaps under which the California Building Standards Commission operates emphasize the inadequacy of halfway measures. The promulgation of the State Building Standards Code would eliminate some of the confusion resulting from uncoordinated building regulations issued by the various state agencies, but would not be a substitute for an integrated department or agency with the responsibility for administration of the State's building laws activities.

1970
SB 952 (Moscone) proposed to create a Board of Building and Safety with sole authority to adopt building standards. It was opposed by the state agencies who were adopting building standards. It was vetoed.

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1972
The Hospital Seismic Safety Act was a legislative response to the San Fernando earthquake of 1971. The Act provided for state-regulated design and construction of certain emergency health facilities. The regulations were placed in Title 22.

1973
AB 2265 (Greene), an administration bill, would have abolished the Department and Commission of Housing and Community Development, and created a Department of Building and Safety. It did not pass.

1975
The Warren-Alquist State Energy Resources Conservation and Development Act was based on a legislative finding that the rapid growth rate in the demand for electric energy was in part due to wasteful, uneconomic, inefficient, and unnecessary uses of power. A continuation of this trend would have resulted in:

- The serious depletion or irreversible commitment of energy and land and water resources
- Potential threats to the state's environmental quality

The Legislature also found there was a pressing need to accelerate research and development of alternative sources of energy. This policy resulted in a situation where more than 20 agencies, ranging from the Barbers' Licensing Board to the State Architect, can adopt building standards and publish them in the separate titles of the California Code of Regulations.

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1978
To correct the problems and confusion resulting from the uncoordinated proliferation of conflicting, duplicate, and overlapping state regulations, SB 331 (Robbins) (Chapter 1152, Statutes of 1979), effective January 1, 1980, provided the Commission with broader powers.

As a result of SB 331, all proposed building regulations adopted by various state agencies must be reviewed and approved by the Commission before the regulations have any force or effect. Further, the legislation called for all building standards to be removed from other titles of the California Code of Regulations and put into a single code — Title 24 — that the Commission is responsible for codifying and publishing. In addition, since January 1980, the Commission is charged with reviewing proposed regulations to make sure they meet the following criteria — commonly called the nine-point criteria — found in Health and Safety Code Section 18930(a):

1. The regulation does not conflict, overlap, or duplicate other regulations.
2. The regulation is within parameters of enabling legislation.
3. The public interest requires the adoption of the regulation.

4. The regulation is not unreasonable, arbitrary, unfair, or capricious.
5. The cost to the public is reasonable, based on the overall benefit derived from the regulation.
6. The regulation is not necessarily ambiguous or vague.
7. Applicable national standards, published standards, and model codes have been incorporated.
8. The format of the regulation is consistent with the BSC's format.
9. The regulation, if it promotes fire and panic safety as determined by the State Fire Marshal, has their written approval.

In addition, the Administrative Procedure Act (APA) requirements related to the adoption of regulations (Government Code Section 11346 et al.) must be met.

1988
AB 4616 (Lancaster), effective January 1, 1989, provided that state agencies that adopt administrative regulations related to the implementation or enforcement of building standards must submit those regulations to the Commission for approval.

SB 2871 (Marks) provided that an amendment, addition, or deletion to the California Building Standards Code, adopted by a city, county, or city and county pursuant to provisions enacted by the bill (together with all applicable portions of the California Building Standards Code), shall become effective 180 days after its publication by the Commission. The bill also required that the building standards contained in specified codes (model codes) published by the Commission apply, with certain exceptions, to all occupancies throughout the state.

1990
AB 4082 (Chandler) required the Commission, in conjunction with all state agencies involved in the adoption of building standards and the interested public, to conduct a comprehensive review of state building standards and statutes relating to state building standards, beginning January 1, 1991 and continuing through December 31, 1992.

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1991
AB 47 (Eastin) transferred the adoption authority of the following state agencies to the Commission:

- Department of Housing and Community Development (HCD)
- Office of the State Fire Marshal (OFSM)
- Office of Statewide Health Planning and Development (OSHPD)
- Office (now Division) of the State Architect (DSA)

Several pieces of legislation were introduced at this time in response to the Loma Prieta earthquake. In particular, AB 204 (Cortese) increased the regulatory authority of the Commission to include, in general, existing buildings having at least one unreinforced masonry bearing wall. Specifically, AB 204 required the Commission to adopt and publish by reference the Appendix Chapter I of the Uniform Code for Building Conservation (UCBC) to provide standards for buildings specified in that appendix.

1992
AB 2358 (Frazee) exempted local jurisdictions that, on or before January 1, 1993, adopted programs for mitigating potentially hazardous buildings, from the application of building standards contained in the Uniform Code for Building Conservation (UCBC) as adopted by the Commission.

AB 2963 (Hauser), effective January 1, 1993, specified that only the building standards approved by the Commission that are effective at the local level at the time an application for a building permit is submitted, apply to plans and specifications as well as to construction work performed under that building permit.

AB 3515 (Lancaster), signed in 1992, was primarily a "clean-up" bill to reorganize and clarify certain provisions in the State Building Standards Law. However, there were three substantive amendments:

Sea & Sage Audubon

P.O. BOX 5447, IRVINE, CA 92616-5447

October 13, 2008

California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

RE: **Agenda Item No. Th14a**

Dear Commissioners,

I am writing as the Conservation Director of Sea and Sage Audubon Society in Orange County to request your support of the staff recommendations for agenda item 14a Application No. 5-07-412-VRC (Driftwood Properties LLC, Laguna Beach), scheduled to be heard on Thursday, October 16th.

I was present at the August 2008 California Coastal Commission hearing in Oceanside to witness the applicants request for a postponement. This seemed to us to be another stall tactic in a long running strategy to avoid dealing with enforcement issues and perceived unfavorable decisions regarding the Driftwood properties. It seems almost inconceivable that the team representing the applicant is not prepared for the October hearing. Coastal Commission Staff has clearly articulated the required steps to proceed with hearings and Chairman Kruer made it quite clear at the August hearing that he was disappointed with the last delay.

We therefore are requesting that you to support staff's recommendation for denial of postponement and further delays of hearing this vested rights issue. We strongly urge you to support staff's recommendation to deny vested rights.

As an Audubon chapter that works very hard to understand and protect resources important to birds and other wildlife in Orange County, we want to express that we feel the Driftwood properties are in fact ESHA. The property supports a large variety of birds, some very sensitive such as California gnatcatchers and coastal cactus wrens. Recently there were sightings of a peregrine falcon using the Driftwood and surrounding habitats for foraging. Despite being disturbed from misuse, the Driftwood properties are important to rare birds and plants. The disturbance of the property does not preclude it from being ESHA, and as you already know it is currently disturbed because the applicant has been doing their best to keep the area from recovering. We don't feel it's a question of becoming ESHA if left alone, we feel it is already ESHA, and will only improve when the violations are addressed and the property is free of future disturbances.

In regards to the claim of vested rights by the applicant, we do not believe that there are provisions to allow for the grandfathering of development rights in this case. The original work that resulted in pads on the property was not done properly. And, it is clear that the original project failed, and that failure does not lead to a transfer of rights to new owners, especially not decades later.

Our basic understanding of vested rights provisions are that they are intended to provide individuals, companies, or organizations, which are proceeding with a project in a reasonable and responsible manor, protection from having new regulations imposed during the project process. There is inherently an expectation of a reasonable completion time, which was not the case here. The very long periods of inactivity are the result of abandonment of the original project.

The current request from the applicant to cram the violation issues and vested rights claims onto the larger development application process would dilute all three processes by creating an impossible work load. We want staff and the commission to have the time necessary to measure each issue on its own merit, which is why we are requesting that you deny the postponement.

At this juncture, with so many delays, there is also a question of public trust. While not everyone always appreciates the participation of the public, it is a major component of the Coastal Act. The public cannot be expected to be continuously dragged up and down the state, only to have applicants delay the process every time they perceive an unfavorable ruling.

We urge you uphold the Coastal Act and support your staff's recommendations to allow this item to be heard on October 16th and deny the vested rights claim.

Thank you for your consideration,

Sincerely,

Scott Thomas
Conservation Director, Orange County
Sea and Sage Audubon Society
(949) 293-2915
Redtail1@cox.net

cc. Peter Douglas, Jeff Staben, Vanessa Miller

Long Bch

SIERRA CLUB
FOUNDED 1892

North County Coasters
P.O.Box 765
Cardiff, CA 92007-0765
760 753-0273
www.SanDiego.SierraClub.org

October 12, 2008

Agenda Item No. Th14a

California Coastal Commission
45 Fremont Street Suite 2000
San Francisco, CA 94105-2219

Subject: Coastal Commission Hearing Agenda Item 14a
Thursday, October 16, 2008

Dear Coastal Commissioners

Our organization is contacting you in advance of the hearing next week to request your support of staff recommendations for agenda item 14a scheduled to be heard on Thursday, October 16th.

14a. Application No. 5-07-412-VRC (Driftwood Properties LLC, Laguna Beach) Application of Driftwood Properties for graded pads and right to maintain pads, including fuel modification in compliance with requirements of City of Laguna Beach, at vacant land at northern terminus of Driftwood Drive, at Northern Terminus of Driftwood Drive, Laguna Beach, Orange County. (KFS-LB/LW-SF)

We not only ask you to support staff's recommendation for denial of vested rights, but we also ask you to support staff's recommendation for denial of yet another postponement.

For several years now this applicant has circumvented enforcement action by submitting applications for permits. The first permit was an after-the-fact permit that staff worked on for over a year. At the last minute in April 2007, the applicant withdrew this application. The second permit is the vested rights application that is scheduled for October 16th. This was originally scheduled to be heard in August and the applicant postponed as they are legally entitled to do. However, the applicant actually appeared at the August hearing and took that opportunity to lobby the Commission during public comments on the merits of their project. After a careful review of the staff report and addendum that addresses this second postponement, we see no merit in another postponement. It is time for this matter to be heard. Continued postponement of this item is a threat to statewide policy. It's a reward for destruction of ESHA and circumvention of the Coastal Act.

Please understand that the acreage that involves this vested rights claim is only a fraction of the land slated for development. This is just part of a 325+ acre golf resort development project that is presently in application stage in the city of Laguna Beach. This is an area of deferred certification that is under the jurisdiction of the Coastal Commission. We need your help in protecting and preserving this incredible coastal resource that is abundant in ESHA, endangered species and a wide variety of wildlife.

Uphold the Coastal Act and support your staff's hard work over the last three plus years. Deny vested rights and allow this item to be heard on October 16th.

Thank you for your support and your dedication to the protection and preservation of our coast.

Sincerely,
David Grubb,
Chair, North County Coastal Group
San Diego Chapter, Sierra Club

ENDANGERED HABITATS LEAGUE
DEDICATED TO ECOSYSTEM PROTECTION AND SUSTAINABLE LAND USE

October 13, 2008

RECEIVED
OCT 14 2008
CALIFORNIA
COASTAL COMMISSION

VIA FACSIMILE

California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219
Fax (415) 904-5400
Fax (562) 590-5084

RE: Agenda Item Th14a, October 16, 2008: Vested Rights Claim, Application No. 5-07-412-VRC (Driftwood Properties LLC, Laguna Beach) – *SUPPORT FOR STAFF RECOMMENDATIONS*

Dear Chairman Kruer and Members of the Commission:

The Endangered Habitats League (EHL) supports the staff recommendations for this item. Requests for withdrawal or postponement should be denied, as should any claim for vested rights. For your reference, EHL is Southern California's only regional conservation group.

We are concerned over long-delayed enforcement actions for the loss of coastal sage scrub and other sensitive habitat on this property. Legal maneuvering that is without merit should not be allowed to further delay enforcement.

Sincerely,

Dan Silver, MD
Executive Director

8424-A SANTA MONICA BLVD., #592, LOS ANGELES, CA 90069-4267 ♦ WWW.EHLEAGUE.ORG ♦ PHONE 213.804.2750 ♦ FAX 323.654.1931

FORM FOR DISCLOSURE OF EX PARTE COMMUNICATIONS

Name or description of project , LPC, etc: Driftwood Properties LLC, Driftwood Estates Properties

Date and time of receipt of communication: October 6, 2008; 10:30 a.m.

Location of communication: Telephonic

Type of communication (letter, facsimile, etc.): Telephonic

Person(s) initiating communication: Rick Zbur, Latham & Watkins LLP; Susan McCabe, McCabe & Company

Detailed substantive description of content of communication:
(Attach a copy of the complete text of any written material received.)

Mr. Zbur and Ms. McCabe spoke to me about procedural issues related to Driftwood's Claim of Vested Rights Application (No. 5-07-412-VRC), which has been agenized for hearing on October 16, 2008.

Mr. Zbur and Ms. McCabe informed me that they understood that Commission counsel may advise Commissioners not to conduct ex parte communications about the substantive issues related to the Claim of Vested Rights Application because some of these issues overlap with issues arising relevant to the pending enforcement matters involving the same Property. While they stated that they believe that the applicable law does not restrict ex parte communications, Mr. Zbur and Ms. McCabe went on to explain that they would restrict their communications this instance to procedural issues out of deference to Commission staff's views, but that they would like to brief me on the substantive issues related to the VRA, if the hearing proceeds to occur.

Mr. Zbur and Ms. McCabe then advised me that Driftwood had asked to withdraw its Claim of Vested Rights Application (reserving its right to resubmit), but Commission staff determined that withdrawal was not allowed because no specific regulation expressly permitted withdrawal of such a claim. They indicated that they did not believe Commission regulations should be interpreted to block withdrawal of a claim of vested rights application. However, if Driftwood is not permitted to withdraw its application, Mr. Zbur and Ms. McCabe explained that Driftwood would like to postpone the hearing.

Driftwood would like to postpone the hearing because the Commission staff has advised Commissioners not to discuss substantive issues regarding the Claim of Vested Rights Application and Driftwood believes this deprives Commissioners of an opportunity to engage in briefings and fully understand the issues. They indicated that it also raises due process concerns. Driftwood representatives also raised policy concerns related to

the impact of enforcement actions restricting communication between an applicant and the Commission on a non-enforcement matter before the Commission. Based on this, they believe Driftwood's Claim of Vested Rights Application should be scheduled at a time the Commission can freely communicate with and be briefed by the applicant.

Mr. Zbur and Ms. McCabe also briefly discussed the fact that Driftwood had demonstrated that grading on the site had occurred in 1960 or before the Coastal Act and that the grading was legal because no grading permit or other legal request prohibited the grading and that the prior property owner had relied on the authorization contained in the Orange County Code. They said they would address these issues in a letter to the Commissioner.

10-14-08
Date

Signature of Commissioner
Bonnie Neely

LA\1908666.1

FORM FOR DISCLOSURE OF EX PARTE COMMUNICATION

Date and time of communication: (For messages sent to a Commissioner by mail or facsimile or received as a telephone or other message, date time of receipt should be indicated.)	October 9, 2008 – 12:17 p.m.
Location of communication: (For communications sent by mail or facsimile, or received as a telephone or other message, indicate the means of transmission.)	Eureka, CA – Via Email
Person(s) initiating communication:	Maggie & Charlie Herbelin
Person(s) receiving communication:	Commissioner Bonnie Neely
Name or description of project:	Driftwood Properties, LLC, Laguna Beach

Detailed substantive description of content of communication:
(If communication included written material, attach a copy of the complete test of the written material.)

(SEE ATTACHED EMAIL COMMUNICATION). Requesting support of staff recommendations for Application of Driftwood Properties, Agenda Item 14-a, Thursday, October 16, 2008.

10/09/08 _____ Bonnie Neely _____

Date Signature of Commissioner

If the communication was provided at the same time to staff as it was provided to a Commissioner, the communication is not ex parte and this form does not need to be filled out.

If communication occurred seven or more days in advance of the Commission hearing on the item that was the subject of the communication, complete this form and transmit it to the Executive Director within seven days of the communication. If it is reasonable to believe that the completed form will not arrive by U.S. mail at the Commission's main office prior to the commencement of the meeting, other means of delivery should be used, such as facsimile, overnight mail, or personal delivery by the Commissioner to the Executive Director at the meeting prior to the time that the hearing on the matter commences.

If communication occurred within seven days of the hearing, complete this form, provide the information orally on the record of the proceedings and provide the Executive Director with a copy of any written material that was part of the communication.

October 8, 2008

California Coastal Commission
45 Fremont Street□Suite 2000□
San Francisco, CA 94105-2219
(If you have a personal address for your individual Commissioner please Insert)

Subject: Coastal Commission Hearing Agenda Item 14a
Thursday, October 16, 2008

Dear Coastal Commission (or specific Commissioner):

Our organization is contacting you in advance of the hearing next week to request your support of staff recommendations for agenda item 14a scheduled to be heard on Thursday, October 16th.

14a. Application No. 5-07-412-VRC (Driftwood Properties LLC, Laguna Beach) Application of Driftwood Properties for graded pads and right to maintain pads, including fuel modification in compliance with requirements of City of Laguna Beach, at vacant land at northern terminus of Driftwood Drive, at Northern Terminus of Driftwood Drive, Laguna Beach, Orange County. (KFS-LB/LW-SF)

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Sincerely,